



Criminal Law (Consolidation) (Scotland) Act 1995

1995 CHAPTER 39

PART IV

INVESTIGATION OF SERIOUS OR COMPLEX FRAUD

27 Lord Advocate's direction.

- (1) Where it appears to the Lord Advocate—
 - (a) that a suspected offence may involve serious or complex fraud; and
 - (b) that, for the purpose of investigating the affairs or any aspect of the affairs of any person, there is good reason to do so,he may give a direction under this section.
- (2) The Lord Advocate may also give a direction under this section by virtue of section 4(2B) of the ^{M1}Criminal Justice (International Co-operation) Act 1990 or on a request being made to him by the Attorney-General of the Isle of Man, Jersey or Guernsey acting under legislation corresponding to this Part of this Act.
- (3) Where a direction is given under this section, this Part of this Act shall apply as regards the investigation of the offence; and any person (other than a constable) nominated by the Lord Advocate either generally or in respect of a particular case (in this Part of this Act referred to as “a nominated officer”) shall be entitled to exercise the powers and functions conferred by this Part of this Act.
- (4) A direction under this section shall be signed by the Lord Advocate.

Marginal Citations

M1 1990 c.5.

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28 Powers of investigation.

- (1) A nominated officer may by notice in writing require the person whose affairs are to be investigated (“the person under investigation”) or any other person who he has reason to believe has relevant information to answer questions or otherwise furnish information with respect to any matter relevant to the investigation at a specified place and either at a specified time or forthwith.
- (2) A nominated officer may by notice in writing require the person under investigation or any other person to produce at such place as may be specified in the notice and either forthwith or at such time as may be so specified any specified documents which appear to a nominated officer to relate to any matter relevant to the investigation or any documents of a specified description which appear to him so to relate; and—
 - (a) if any such documents are produced, a nominated officer may—
 - (i) take copies or extracts from them;
 - (ii) require the person producing them to provide an explanation of any of them;
 - (b) if any such documents are not produced, a nominated officer may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.
- (3) Where, on a petition presented by the procurator fiscal, the sheriff is satisfied, in relation to any documents, that there are reasonable grounds for believing—
 - (a) that—
 - (i) a person has failed to comply with an obligation under this section to produce them;
 - (ii) it is not practicable to serve a notice under subsection (2) above in relation to them; or
 - (iii) the service of such a notice in relation to them might seriously prejudice the investigation; and
 - (b) that they are on premises specified in the petition,
 he may issue such a warrant as is mentioned in subsection (4) below.
- (4) The warrant referred to in subsection (3) above is a warrant authorising a constable together with any other persons named in the warrant—
 - (a) to enter (using such force as is reasonably necessary for the purpose) and search the premises; and
 - (b) to take possession of any documents appearing to be documents of the description specified in the petition or to take in relation to any documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.
- (5) A statement by a person in response to a requirement imposed by virtue of this section may only be used in evidence against him—
 - (a) in a prosecution for an offence under section 44(2) of this Act; or
 - (b) in a prosecution for some other offence where in giving evidence he makes a statement inconsistent with it.

[^{F1}(5A) However, the statement may not be used against that person by virtue of paragraph (b) of subsection (5) unless evidence relating to it is adduced, or a question relating to it is asked, by or on behalf of that person in the proceedings arising out of the prosecution.]

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- (6) A person shall not under this section be required to disclose any information or produce any document which is an item subject to legal privilege within the meaning of section 33 of this Act; except that a lawyer may be required to furnish the name and address of his client.
- (7) No person shall be bound to comply with any requirement imposed by a person exercising power by virtue of a nomination under section 27(3) of this Act unless he has, if required to do so, produced evidence of his authority.
- (8) Any evidence obtained by the Lord Advocate by virtue of section 4(2B) of the ^{M2}Criminal Justice (International Co-operation) Act 1990 shall be furnished by him to the Secretary of State for transmission to the overseas authority in compliance with whose request (in the following subsections referred to as the “relevant request”) it was so obtained.
- (9) If, in order to comply with the relevant request, it is necessary for that evidence to be accompanied by any certificate, affidavit or other verifying document, the Lord Advocate shall also furnish for transmission such document of that nature as appears to him to be appropriate.
- (10) Where any evidence obtained by virtue of section 4(2B) of the said Act of 1990 consists of a document, the original or a copy shall be transmitted and where it consists of any other article, the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the relevant request.
- (11) In this section—
“documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;
“evidence”, in relation to a relevant request, includes documents and other articles; and
“premises” has the same meaning as in section 33 of this Act.
- (12) This section and sections 27 and 29 of this Act shall apply to England and Wales and Northern Ireland; and for the purposes of such application any reference—
(a) to the sheriff shall be construed as a reference to a justice of the peace; and
(b) to a petition presented by the procurator fiscal shall be construed—
(i) in England and Wales as a reference to an information laid by a nominated officer;
(ii) in Northern Ireland as a reference to a complaint laid by a nominated officer.

Textual Amendments

F1 S. 28(5A) inserted ((E.W.N.I.) 14.4.2000 and (S.) 1.1.2001) by 1999 c. 23, s. 59, **Sch. 3 para. 25** (with Sch. 7 para. 5(2)); S.I. 2000/1034, **art. 2**; S.S.I. 2000/445, **art. 2**

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M2 1990 c.5.

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29 Offences in relation to investigations under section 28.

- (1) Where any person—
 - (a) knows or suspects that an investigation under section 28 of this Act is being carried out or is likely to be carried out; and
 - (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which he knows or suspects or has reasonable grounds to suspect are or would be relevant to such an investigation,
 he shall be guilty of an offence.
- (2) In proceedings against a person for an offence under subsection (1) above, it shall be a defence to prove—
 - (a) that he did not know or suspect that by acting as he did he was likely to prejudice the investigation; or
 - (b) that he had lawful authority or reasonable excuse for acting as he did.
- (3) A person guilty of an offence under subsection (1) above shall be liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both; and
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (4) Any person who fails to comply with a requirement imposed on him under the said section 28 shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.
- (5) In proceedings against a person for an offence under subsection (4) above, it shall be a defence to prove that he had a reasonable excuse for acting as he did.

30 Disclosure of information.

- (1) Where any information subject to an obligation of secrecy under the ^{M3}Taxes Management Act 1970 has been disclosed by the Commissioners of Inland Revenue or an officer of those Commissioners for the purposes of any prosecution of an offence relating to inland revenue, that information may be disclosed by the Lord Advocate for the purposes of any prosecution of an offence—
 - (a) in respect of which a direction has been given under section 27(1)(a) of this Act; or
 - (b) relating to inland revenue,
 but not otherwise.
- (2) Where any information is subject to an obligation of secrecy imposed by or under any enactment other than an enactment contained in the Taxes Management Act 1970, the obligation shall not have effect to prohibit the disclosure of that information to a nominated officer but any information disclosed by virtue of this subsection may only be disclosed by the Lord Advocate for the purpose of a prosecution in Scotland or elsewhere.
- (3) Without prejudice to his power to enter into an agreement apart from this subsection, the Lord Advocate may enter into an agreement for the supply of information to or by

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him subject, in either case, to an obligation not to disclose the information concerned otherwise than for a specified purpose.

- (4) Subject to subsections (1) and (2) above and to any provision of an agreement for the supply of information which restricts the disclosure of the information supplied, information obtained by a nominated officer may be disclosed—
- (a) to any government department, or any Northern Ireland Department, or other authority or body discharging its functions on behalf of the Crown (including the Crown in right of Her Majesty's Government in Northern Ireland);
 - (b) to any competent authority;
 - (c) for the purposes of any prosecution in Scotland or elsewhere; and
 - (d) for the purposes of assisting any public or other authority for the time being designated for the purpose of this paragraph by an order made by the Secretary of State to discharge any functions which are specified in the order.
- (5) The following are competent authorities for the purposes of subsection (4) above—
- (a) an inspector appointed under Part XIV of the ^{M4}Companies Act 1985 or Part XV of the Companies (Northern Ireland) Order 1986;
 - (b) the Accountant in Bankruptcy;
 - (c) an Official Receiver;
 - (d) the Official Receiver for Northern Ireland;
 - [^{F2}(e) a person appointed under—
 - (i) section 167 of the Financial Services and Markets Act 2000 (general investigations),
 - (ii) section 168 of that Act (investigations in particular cases),
 - (iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),
 - (iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or
 - (v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),to conduct an investigation;
 - (f) a body corporate established in accordance with section 212(1) of the Financial Services and Markets Act 2000 (compensation scheme manager);]
- (6) An order under subsection (4)(d) above may impose conditions subject to which, and otherwise restrict the circumstances in which, information may be disclosed under that paragraph.

Textual Amendments

F2 S. 30(5)(e)(f) substituted (1.12.2001) for s. 30(5)(e)-(l) by S.I. 2001/3649, arts. 1, 234

Marginal Citations

M3 1970 c.9.

M4 1985 c.6.

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