



Criminal Law (Consolidation) (Scotland) Act 1995

1995 CHAPTER 39

PART IV

INVESTIGATION OF SERIOUS OR COMPLEX FRAUD

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;

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- (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.]
- (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 [^{F2}by virtue of section 27(2) of this Act shall be given to the overseas authority which requested it or to the Lord Advocate for forwarding to that authority]
- (9) ^{F3}.....
- (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 [^{F4}forwarded] and where it consists of any other article, the article itself or a description, photograph or other representation of it shall be [^{F4}forwarded], 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

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“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**
- F2** Words in s. 28(8) substituted (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 91(1), 94, **Sch. 5 para. 63(a)**; S.I. 2004/786, **art. 3**
- F3** S. 28(9) repealed (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 91, 94, Sch. 5 para. 63(b), **Sch. 6**; S.I. 2004/786, **art. 3**
- F4** Words in s. 28(10) substituted (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 91(1), 94, {Sch. 5 par. 63(c)}; S.I. 2004/786, **art. 3**

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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. 30(8) added by [2010 asp 13 s. 200\(2\)\(a\)](#)
- s. 45(6) added by [2010 asp 13 s. 200\(2\)\(c\)](#)
- s. 46(5) added by [2010 asp 13 s. 200\(2\)\(d\)\(ii\)](#)