

## **EXECUTIVE NOTE**

### **THE SCOTTISH CRIMINAL CASES REVIEW COMMISSION (PERMITTED DISCLOSURE OF INFORMATION) ORDER 2009**

**SSI 2009/448**

The above instrument has been made in exercise of the powers conferred by section 194K(1)(f) of the Criminal Procedure (Scotland) Act 1995. The instrument is subject to negative resolution procedure.

#### **Policy Objectives**

Section 194J of the Criminal Procedure (Scotland) Act 1995 makes it an offence for members or employees of the Scottish Criminal Cases Review Commission to 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.

Section 194K sets out a number of exceptions. These include where the information is disclosed-

- for the purposes of any criminal, disciplinary or civil proceedings;
- in order to assist in dealing with an application made to the Scottish Ministers for compensation for a miscarriage of justice;
- in any statement or report required by the Criminal Procedure (Scotland) Act 1995;
- in or in connection with the exercise of any function under that Act.

Section 194K(1)(f) provides a further exception where the information is disclosed “in any circumstances in which the disclosure of information is permitted by an order made by the Scottish Ministers.” This instrument is made in exercise of that power.

The instrument defines a further set of circumstances in which disclosure of information by the SCCRC is permitted. These are essentially where the Commission has referred a conviction to the Appeal Court (on the grounds that a miscarriage of justice may have occurred and it is in the interest of justice to make the reference) and the appeal has subsequently been abandoned by the appellant. In such circumstances the Commission has identified that there may have been a miscarriage of justice but that can no longer be resolved in court. It may be in the public interest for information obtained by the Commission to be made public, but that is currently prevented by section 194J. Since the Commission was established in 1999, there have been two cases involving references of a conviction where the appeal has been abandoned. References by the Commission purely in relation to sentence are not included.

The instrument permits, but does not require, the Commission to disclose information. It requires a decision by the Commission that the information should be disclosed, and the consent of the persons from whom the information has been obtained.

Where the disclosure of information is excepted from section 194J, the disclosure of the information is not prevented by any obligation of secrecy or other limitation on disclosure arising otherwise than under that section. It will nevertheless be appropriate for the Commission to consider such issues in deciding whether the information should be disclosed.

**Consultation**

The Scottish Criminal Cases Review Commission and the Crown Office have been consulted during the preparation of this instrument.

**Financial Effects**

The instrument is not expected to have any significant financial effects.

Scottish Government  
December 2009