

2010 No. 385 (C. 25)

CRIMINAL LAW

**The Criminal Justice and Licensing (Scotland) Act 2010
(Commencement No. 5) Order 2010**

Made - - - - *4th November 2010*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 201(1) and (2) and 206(1) of the Criminal Justice and Licensing (Scotland) Act 2010(a).

Citation and interpretation

1.—(1) This Order may be cited as the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 5) Order 2010.

(2) In this Order—

“the Commission” means the Scottish Criminal Cases Review Commission; and

“the 2010 Act” means the Criminal Justice and Licensing (Scotland) Act 2010.

Commencement of section 83

2. Section 83 of the 2010 Act comes into force on the day after the day on which this Order is made.

Transitional provision

3.—(1) Paragraph (2) applies in relation to any proceedings, arising from a reference made by the Commission to the High Court by virtue of section 194B of the Criminal Procedure (Scotland) Act 1995(b), which are not concluded as at the date of commencement of section 83 of the 2010 Act.

(2) Where an appellant seeks to found an appeal on grounds additional to those as set out in the Commission’s statement of reasons then the period of 21 days specified in subsections (4C) and (4D) of section 194D of the Criminal Procedure (Scotland) Act 1995(c) shall be construed as 21 days after the date of commencement of section 83 of the 2010 Act.

(a) 2010 asp 13.

(b) 1995 c.46. Section 194B of the Criminal Procedure (Scotland) Act 1995 was inserted by section 25 of the Crime and Punishment (Scotland) Act 1997 (c.48).

(c) Section 194D of the Criminal Procedure (Scotland) Act 1995 was inserted by section 25 of the Crime and Punishment (Scotland) Act 1997. Subsections (4C) and (4D) are inserted by section 83 of the 2010 Act.

Savings provision

4. Notwithstanding the commencement of section 83 of the 2010 Act, where an appellant has, prior to the date of commencement of that section, a ground or grounds of appeal unrelated to the Commission's statement of reasons the appeal may proceed as if that section had not been commenced.

St Andrew's House,
Edinburgh
4th November 2010

KENNY MACASKILL
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Order)

The Criminal Justice and Licensing (Scotland) Act 2010 (“the 2010 Act”) received Royal Assent on 6th August 2010. Sections 201, 202, 204, 205 and 206 of the 2010 Act came into force on Royal Assent.

Article 2 of this Order brings into force section 83 of the 2010 Act.

Section 83 of the 2010 Act amends section 194D of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). Section 194D of the 1995 Act makes provision regarding the reference of convictions, sentences or findings by the Scottish Criminal Cases Review Commission (“the Commission”) to the High Court. Under the provision made by section 83 of the 2010 Act where the Commission makes a reference under section 194B of the 1995 Act the appeal arising from the reference can only be based on a ground relating to one or more of the reasons given by the Commission for the reference unless the High Court has, where it considers it is in the interests of justice to do so, given leave for the appellant to found the appeal on additional grounds.

Article 3 of this Order makes transitional provision in respect of proceedings in relation to which a referral has been made by the Commission to the High Court by virtue of section 194B of the 1995 Act and in respect of which have not concluded as at the date of commencement of section 83 of the 2010 Act. The appellant may, in such cases, seek additional grounds to found the appeal as if the time period specified in subsections (4C) and (4D) of section 194D of the 1995 Act is such time period after the date of the commencement of section 83 of the 2010 Act.

Article 4 of the Order makes savings provision which provides that notwithstanding the commencement of section 83 of the 2010 Act where an appellant has, prior to the date of commencement of the section, a ground or grounds of appeal unrelated to the Commission’s statement of reasons the appeal may proceed as if the amendments made by the provision have not been made.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The first commencement order, the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 1) Order 2010 (S.S.I. 2010/297) was made on 12th August 2010. The second commencement order, the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 2) Order 2010 (S.S.I. 2010/339) was made on 22nd September 2010. The third commencement order, the Protection of Vulnerable Groups (Scotland) Act 2007 (Commencement No. 4) and the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 3) Order 2010 (S.S.I. 2010/344) was made on 23rd September 2010. The Sexual Offences (Scotland) Act 2009 (Commencement No. 1) and the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 4) Order 2010 (S.S.I. 2010/357) was made on 7th October 2010.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
Section 178(3)(e) (partially)	16th August 2010	2010/297
Sections 38 and 97	6th October 2010	2010/339
Section 108(1) and (4) (partially)	12th October 2010	2010/344
Sections 43, 44 and 63	1st December 2010	2010/357

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