

Criminal Justice Committee  
Wednesday 25 September 2024  
29th Meeting, 2024 (Session 6)

## Note by the Clerk on the Scottish Criminal Cases Review Commission (Permitted Disclosure of Information) Order 2024 (SSI 2024/220)

### Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to annulment by resolution of the Parliament until 11 October 2024. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.
2. More information about the instrument is summarised below:

**Title of instrument:** [Scottish Criminal Cases Review Commission \(Permitted Disclosure of Information\) Order 2024](#) (SSI 2024/220)

**Laid under:** Section 194K(1)(f) of the [Criminal Procedure \(Scotland\) Act 1995](#)

**Laid on:** 30 August 2024

**Procedure:** Negative

**Deadline for committee consideration:** 7 October 2024

**Deadline for Chamber consideration:** 11 October 2024 (Statutory 40-day deadline for any decision whether to annul the instrument)

**Commencement:** 12 October 2024

### Procedure

3. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
4. Once laid, the instrument is referred to:
  - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
  - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).

6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

## **Delegated Powers and Law Reform Committee consideration**

7. The DPLR Committee considered the instrument on 3 September 2024 and reported on it in its [51st Report, 2024](#). The DPLR Committee made no recommendations in relation to the instrument.

## **Purpose of the instrument**

8. The purpose of this instrument is to specify additional circumstances in which a member or employee of the Scottish Criminal Cases Review Commission (“the Commission”) may disclose information, or authorise the disclosure of information, obtained by the Commission without committing an offence in terms of section 194J(3) of the Criminal Procedure (Scotland) Act 1995.
9. The instrument specifies that the disclosure of such information is permitted if it is disclosed in response to a requirement under section 5 of the Post Office (Horizon System) Offences (Scotland) Act 2024.
10. The Policy Note accompanying the instrument is included in Annexe A. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

## **Committee consideration**

11. So far, no motion recommending annulment has been lodged.
12. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:
  - seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or
  - inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

13. If members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).
14. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

## **Clerks to the Committee September 2024**

## **Annexe A: Scottish Government Policy Note**

### **The Scottish Criminal Cases Review Commission (Permitted Disclosure of Information) Order 2024**

#### **SSI 2024/220**

The above instrument was 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.

#### **Summary Box**

The purpose of this instrument is to specify additional circumstances in which a member or employee of the Scottish Criminal Cases Review Commission (“the Commission”) may disclose information, or authorise the disclosure of information, obtained by the Commission without committing an offence in terms of section 194J(3) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). The instrument specifies that the disclosure of such information is permitted if it is disclosed in response to a requirement under section 5 of the Post Office (Horizon System) Offences (Scotland) Act 2024 (“the 2024 Act”).

#### **Policy Objectives**

Section 194J of the 1995 Act makes it an offence for members or employees of the 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 or section 194M.

Section 194K(1)(f) provides an 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 an exercise of that power.

The policy objective is to ensure that members and employees of the Commission can share information with the Scottish Ministers when they receive a notice under section 5 of the 2024 Act from the Scottish Ministers in relation to a small number of cases in which the Commission hold information.

#### **UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility**

The Scottish Ministers have made the following statement regarding children’s rights. In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Scottish Criminal Cases Review Commission (Permitted Disclosure of Information) Order 2024 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

**EU Alignment Consideration**

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

**Consultation**

Scottish Government consulted with the Commission during the preparation of this instrument. The Commission confirmed that an order made under section 194K(1)(f) of the 1995 Act will enable them to share information in response to a requirement under section 5 of the 2024 Act.

**Impact Assessments**

There are no equality/children's/privacy, etc. impact issues.

**Financial Effects**

The Cabinet Secretary for Justice and Home Affairs confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Justice Directorate  
28 August 2024