

Criminal Justice and Licensing (Scotland) Bill

5th Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the fifth day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

Children – age of criminal responsibility and minimum age of prosecution

379, 126, 127, 389, 549

Notes on amendments in this group

Amendment 379 pre-empts amendments 126 and 127

Offences – liability of partners

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Witness statements

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Victims' representation at Parole Board hearings

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Convictions in other UK or EU jurisdictions

518, 519, 520, 521, 522, 540

Power of sheriff or JP to grant warrants to police based outside sheriffdom

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Bail conditions – remote monitoring requirements

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Prosecution on indictment – Scottish Law Officers

421, 422, 423, 424, 425, 426, 427, 451

Dockets and charges in sex cases

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Remand and committal of children and young persons

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Prohibition of personal conduct of case by accused

429, 454, 455, 456, 458, 459

Crown appeals

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Retention of samples etc. – adults

478, 404, 405, 479, 406, 480, 407, 481, 482, 408, 494, 499, 502, 503, 504, 512, 513

Notes on amendments in this group

Amendment 478 pre-empts amendment 404

Retention of samples etc. – alternatives to prosecution

418, 419

Retention of samples etc. – children referred to children’s hearings

409, 410, 380, 483, 484, 545, 381, 485, 486, 411, 546, 487, 488, 489, 490, 491, 492, 382, 493, 412

Notes on amendments in this group

Amendment 410 pre-empts amendments 380, 483, 484 and 545

Amendment 380 pre-empts amendments 483 and 484

Amendment 411 pre-empts amendments 546, 487, 488, 489, 490, 491, 492 and 382

Amendment 492 pre-empts amendment 382

Amendment 493 pre-empts amendment 412

Use of samples etc.

495, 496, 497, 498, 500, 501, 505, 506, 507, 508, 509, 510

Scottish Criminal Cases Review Commission – grounds for appeal

133, 134, 135

Prior statements by witnesses – abolition of competence test

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Witness statements – use during trial

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Child witnesses in proceedings for people trafficking offences

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Witness anonymity orders

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European evidence warrants

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Jurors in criminal trials

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Data matching for detection of fraud etc.

136, 137

Collection of information on criminal injuries

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Closure of premises associated with human exploitation etc. (minor corrections etc.)

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Foreign travel orders – surrender of passports

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Sex offender notification requirements

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Risk of sexual harm orders – spent convictions

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Police and SCDEA – authorisation of interference with property

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Enhanced criminal record certificates: disclosure of sex offender notification requirements

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Rehabilitation of offenders – spent alternatives to prosecution

447, 452, 453

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Assistance for victim support

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Disclosure - meaning of “information”

696, 553, 697, 555, 556

Provision of information to prosecutor

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Prosecutor's duty to disclose information

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Notes on amendments in this group

Amendment 148 pre-empts amendments 568, 569, 570 and 571

Amendment 572 and amendment 149 are direct alternatives

Amendment 574 pre-empts amendment 150

Amendment 575 pre-empts amendment 151

Amendment 576 pre-empts amendment 152

Amendment 579 pre-empts amendment 153

Amendment 581 pre-empts amendment 154

Amendment 606 and amendment 158 are direct alternatives

Amendment 617 and amendment 159 are direct alternatives

Amendment 619 and amendment 160 are direct alternatives

Amendment 624 and amendment 162 are direct alternatives

Amendment 626 in group (Application to court – orders preventing or restricting disclosure) pre-empts amendment 163 in this group

Amendment 646 in group (Application to court – orders preventing or restricting disclosure) and amendment 164 in this group are direct alternatives

Amendment 667 in group (Appeals against disclosure orders etc.) pre-empts amendment 165 in this group

Amendment 690 pre-empts amendment 166

Amendment 166 pre-empts amendment 691

Defence statements

584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 611, 624

Court rulings on disclosure

603, 604, 605, 615, 616

Disclosure – application to appellate proceedings

608, 609, 610, 612, 613, 614

Means of disclosure

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Confidentiality of disclosed information and disclosure to third party

620, 621, 622, 623, 692

Application to court – orders preventing or restricting disclosure

625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 666, 669, 670, 671, 673, 675, 676, 677, 678, 680, 686, 687

Orders preventing or restricting disclosure - applications by Secretary of State

653, 654, 655, 656, 679, 681, 682, 683, 684, 685

Disclosure – appointment of special counsel

657, 658, 659, 660, 661, 668, 672, 674

Appeals against disclosure orders etc.

662, 663, 664, 665, 667

Abolition of common law rules on disclosure

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Mental disorder and unfitness for trial

24, 167, 195

Conditions to which licences under the 1982 Act are to be subject

168

Licensing – powers of entry etc. (definition of “authorised civilian employee”)

169

Licensing of metal dealers

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Licensing of street trading – food hygiene certificates

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Licensing of market operators

171, 172, 2, 3, 4

Notes on amendments in this group

Amendment 172 pre-empts amendments 2 and 3

Control of lap dancing and other adult entertainment venues

516

Applications for licences

173

Provisions to be considered as part of the Alcohol (Scotland) Bill

174, 182, 186

Premises licence applications

460, 542, 176, 180

Reviews of premises licences – notification of determinations

175

Premises licence – minor variations

547

Premises licence – transfer

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Premises licences – connected persons and interested parties

693

Provisional premises licences

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Consumption of alcohol on licensed premises outwith licensed hours

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Occasional licences

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Extended hours applications – notification period

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Personal licence applications

177, 178, 181

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Liability for offences under 2005 Act

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Corruption in public bodies

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Orders and regulations – circumstances in which affirmative procedure required

187, 188

Incest and related offences

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Criminal law – revision

191, 193

Breach of undertakings – consequential modification

457

Exercise of functions by stipendiary magistrates

695

Amendments already debated

Community payback orders – consequential modifications

With 342 – 414

Slavery, servitude and forced or compulsory labour

With 112 – 143

Mutual recognition of judgments and probation decisions

With 105 – 184

Presumption against short periods of imprisonment or detention

With 100 – 392, 393

Abolition of offences of sedition and leasing-making

With 114 – 189, 192, 194, 196

People trafficking (and consequential provision)

With 371 – 386, 387

Clarification of existing offence prohibiting the carrying of offensive weapons

With 109 – 515

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Amendments in debating order

Children – age of criminal responsibility and minimum age of prosecution

Robert Brown

- 379 In section 38, page 53, line 15, leave out subsection (2) and insert—
<(2) In section 41 (age of criminal responsibility), for “eight” substitute “12”.>

Bill Aitken

- 126 In section 38, page 53, line 17, after <not> insert <normally>

Bill Aitken

- 127 In section 38, page 53, line 18, after <not> insert <normally>

Richard Baker

- 389 In section 38, page 53, line 26, at end insert—
- <(5) The Scottish Ministers must, as soon as possible after the end of each of the reporting years, lay before the Scottish Parliament and publish a report on the disposal of cases (“relevant cases”) involving children who, but for section 41A of the 1995 Act (as inserted by subsection (2)), would have been prosecuted.
 - (6) For the purposes of subsection (5), the “reporting years” are—
 - (a) the period of 12 months beginning with the day on which this section comes into force, and
 - (b) the periods of 12 months beginning with the first and second anniversaries of that day.
 - (7) A report under subsection (5) must, in particular—
 - (a) specify the number of relevant cases disposed of during the reporting year,
 - (b) set out how those cases were disposed of and the costs and other resources involved in those disposals, and
 - (c) state what (if any) consideration the Scottish Ministers have given during the year covered by the report to the merits of altering the range of disposals available in such cases.>

Robert Brown

- 549 In section 143, page 138, line 35, at end insert <or
() an order under section 148(1) bringing into force section 38(1), (2), (3) or (4),>

Offences – liability of partners

Kenny MacAskill

- 128 In section 39, page 53, line 32, after <offence> insert <committed by the partnership>

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Kenny MacAskill

129 In section 39, page 54, line 9, at end insert—

<() In subsection (1), the references to a partner of a partnership include references to a person purporting to act as a partner of the partnership.>

Witness statements

Kenny MacAskill

130 In section 40, page 54, line 23, leave out <all reasonable hours> and insert <a reasonable time and in a reasonable place>

Bill Aitken

Supported by: Robert Brown

131 Leave out section 40

Victims' representation at Parole Board hearings

Margaret Curran

403* After section 40, insert—

<Parole: victims' representation

Victims' representation at Parole Board hearings

- (1) Section 17 of the Criminal Justice (Scotland) Act 2003 (asp 7) is amended as follows.
- (2) After subsection (1), insert—
 - “(1A) Representations under subsection (1) may include notification by the victim of a desire to be heard (either in person or through a representative) at the relevant hearing of the Parole Board for Scotland.
 - (1B) In this section, the “relevant hearing” of the Board is the hearing at which the Board is to consider the convicted person’s case in order to decide whether to recommend, or direct, that person’s release on licence (and if there are to be a number of hearings which otherwise meet this description, the Board may determine which is the relevant hearing for the purposes of this section).”.
- (3) In subsection (3), for “Parole Board for Scotland” substitute “Board”.
- (4) After subsection (5), insert—
 - “(5A) Where representations are made under subsection (1) which include notification of a desire to be heard at the relevant hearing, the Board must—
 - (a) give the victim reasonable notice in writing of when and where the hearing is to take place and invite the victim to—
 - (i) attend the hearing, with or without an accompanying person, in order to be heard in person; or
 - (ii) send a representative to the hearing to be heard on the victim’s behalf;

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- (b) in so doing, give the victim appropriate information about the hearing and how it is likely to be conducted including, in particular—
 - (i) information about any parts of the hearing from which the victim and any accompanying person are, or the victim’s representative is, to be excluded, and
 - (ii) any limits on their participation during the other parts of the hearing;
- (c) at the hearing, afford the victim (or the victim’s representative) a reasonable opportunity to be heard.
- (5B) A victim’s representative may only be a member of the victim’s immediate family or a friend of the victim.
- (5C) In reaching its decision at or after the hearing, the Board must take account of—
 - (a) any written representations made under subsection (1); and
 - (b) anything said by the victim (or the victim’s representative) at the hearing.”.
- (5) In section 20(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) (Parole Board rules), after paragraph (ba) insert—
 - “(bb) in relation to victims who have made representations under section 17(1) of the Criminal Justice (Scotland) Act 2003 (asp 7) which include notifications of a desire to be heard at the relevant hearing (within the meaning of subsection (1B) of that section), enabling such victims to attend such hearings of the Board;”.>

Convictions in other UK or EU jurisdictions

Kenny MacAskill

518 In section 41, page 55, line 22, at end insert—

- <(4A) The reference in subsection (4)(c) to any previous conviction of an offence under subsection (1)(b) includes any previous conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to an offence under subsection (1)(b).
- (4B) The references in subsection (4)(d) to subsection (4) are to be read, in relation to a previous conviction by a court referred to in subsection (4A), as references to any provision that is equivalent to subsection (4).
- (4C) Any issue of equivalence arising in pursuance of subsection (4A) or (4B) is for the court to determine.>

Kenny MacAskill

519 In section 52, page 64, line 11, at end insert—

- <() A reference in this section to a conviction which occurred on or after the date of offence O is a reference to such a conviction by a court in any part of the United Kingdom or in any other member State of the European Union.”.>

THIS IS NOT THE MARSHALLED LIST

Kenny MacAskill

520 In section 52, page 64, line 36, at end insert—

<() A reference in this section to a conviction which occurred on or after the date of offence O is a reference to such a conviction by a court in any part of the United Kingdom or in any other member State of the European Union.”.>

Kenny MacAskill

521 After section 52, insert—

<Convictions by courts in other EU member States

- (1) Schedule (*Convictions by courts in other EU member States*) makes modifications of the 1995 Act and other enactments for the purposes of and in connection with implementing obligations of the United Kingdom created by or arising under the Framework Decision (so far as they have effect in or as regards Scotland).
- (2) The Scottish Ministers may by order make further provision for the purposes of and in connection with implementing those obligations.
- (3) The provision may, in particular, confer functions—
 - (a) on the Scottish Ministers,
 - (b) on other persons.
- (4) An order under subsection (2) may modify any enactment.
- (5) In this section, the “Framework Decision” means Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.>

Kenny MacAskill

522 After schedule 2, insert—

<SCHEDULE

(introduced by section (*Convictions by courts in other EU member States*)(1))

CONVICTIONS BY COURTS IN OTHER EU MEMBER STATES: MODIFICATIONS OF ENACTMENTS

PART 1

THE 1995 ACT

The 1995 Act

- 1 The 1995 Act is amended as follows.
- 2 In section 23C(2)(d)(i) (previous convictions to be taken into consideration in determining bail), for “outwith Scotland” substitute “by courts outside the European Union”.
- 3 In section 27 (breach of bail conditions: offences), after subsection (3) insert—

“(3A) The reference in subsection (3)(b) to any previous conviction of an offence under subsection (1)(b) includes any previous conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to an offence under subsection (1)(b).

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- (3B) The references in subsection (3)(c) to subsection (3) are to be read, in relation to a previous conviction by a court referred to in subsection (3A), as references to any provision that is equivalent to subsection (3).
- (3C) Any issue of equivalence arising in pursuance of subsection (3A) or (3B) is for the court to determine.”.
- 4 In section 202(2) (deferred sentence), for “Great Britain” substitute “the United Kingdom or in another member State of the European Union”.
- 5 In section 204 (restrictions on passing sentence of imprisonment or detention)—
- (a) in each of subsections (1) and (2), after “United Kingdom” insert “or in another member State of the European Union”,
- (b) after subsection (4) insert—
- “(4A) The court shall, for the purpose of determining whether a person has been previously sentenced to imprisonment or detention by a court in a member State of the European Union other than the United Kingdom—
- (a) disregard any previous sentence of imprisonment which, being the equivalent of a suspended sentence, has not taken effect;
- (b) construe detention as meaning an equivalent sentence to any of those mentioned in subsection (4)(b).
- (4B) Any issue of equivalence arising in pursuance of subsection (4A) is for the court to determine.”.
- 6 In section 205B (minimum sentence for third conviction of certain offences relating to drug trafficking)—
- (a) in subsection (1)(b), for “been convicted in any part of the United Kingdom of two other class A drug trafficking offences” substitute “two previous convictions for relevant offences”,
- (b) after subsection (1) insert—
- “(1A) In subsection (1), “relevant offence” means—
- (a) in relation to a conviction by a court in any part of the United Kingdom, a class A drug trafficking offence;
- (b) in relation to a conviction by a court in a member State of the European Union other than the United Kingdom, an offence that is equivalent to a class A drug trafficking offence.
- (1B) Any issue of equivalence arising in pursuance of subsection (1A)(b) is for the court to determine.”.
- 7 In section 275A (disclosure of accused’s previous convictions where court allows questioning or evidence under section 275)—
- (a) in subsection (10)—
- (i) the word “or” immediately following paragraph (a) is repealed,
- (ii) after paragraph (a) insert—
- “(aa) a conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to one to which section 288C of this Act applies by virtue of subsection (2) thereof; or”,

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- (b) after subsection (10) insert—
- “(10A) Any issue of equivalence arising in pursuance of subsection (10)(aa) is for the court to determine.”.
- 8 In section 307 (interpretation)—
- (a) in subsection (1), insert the following definition at the appropriate place—
- ““conviction”, in relation to a previous conviction by a court outside Scotland, means a final decision of a criminal court establishing guilt of a criminal offence;”, and
- (b) for subsection (5) substitute—
- “(5) Except where the context requires otherwise—
- (a) any reference in this Act to a previous conviction is to be construed as a reference to a previous conviction by a court in any part of the United Kingdom or in any other member State of the European Union;
- (b) any reference in this Act to a previous sentence is to be construed as a reference to a previous sentence passed by any such court;
- (c) any reference to a previous conviction of a particular offence is to be construed, in relation to a previous conviction by a court outside Scotland, as a reference to a previous conviction of an equivalent offence; and
- (d) any reference to a previous sentence of a particular kind is to be construed, in relation to a previous sentence passed by a court outside Scotland, as a reference to a previous sentence of an equivalent kind.”.

PART 2

OTHER ENACTMENTS

The Civic Government (Scotland) Act 1982 (c.45)

- 9 In section 58 of the Civic Government (Scotland) Act 1982, after subsection (4) insert—
- “(4A) In subsection (4), the reference to a conviction for theft includes a reference to a conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to theft.
- (4B) Any issue of equivalence arising in pursuance of subsection (4A) is for the court to determine.”.

The Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9)

- 10 In section 27(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (interpretation of Part 1), insert at the appropriate place—
- ““previous conviction” means a previous conviction by a court in any part of the United Kingdom or in any other member State of the European Union;”.

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The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)

- 11 (1) Section 9 of the Criminal Law (Consolidation) (Scotland) Act 1995 (permitting girl to use premises for intercourse) is amended as follows.
- (2) In subsection (2A)—
- (a) the word “or” immediately following paragraph (a) is repealed, and
 - (b) after paragraph (a) insert—
 - “(aa) that person has a previous conviction for a relevant foreign offence committed against a person under the age of 16; or”.
- (3) In subsection (3)—
- (a) the word “and” immediately following paragraph (a) is repealed, and
 - (b) after paragraph (a) insert—
 - “(aa) “a previous conviction for a relevant foreign offence” has the same meaning as in section 39(5)(aa) of that Act; and”.

The Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17)

- 12 In section 4(1) of the Custodial Sentences and Weapons (Scotland) Act 2007 (basic definitions for purposes of Part 2), insert at the appropriate place—
- ““previous conviction” means a previous conviction by a court in any part of the United Kingdom or in any other member State of the European Union,”.

The Sexual Offences (Scotland) Act 2009 (asp 9)

- 13 (1) Section 39 of the Sexual Offences (Scotland) Act 2009 (defences in relation to offences against older children) is amended as follows.
- (2) In subsection (2)—
- (a) in paragraph (a)—
 - (i) the word “or” immediately following sub-paragraph (i) is repealed, and
 - (ii) after sub-paragraph (i) insert—
 - “(ia) if A has a previous conviction for a relevant foreign offence committed against a person under the age of 16, or”,
 - (b) in paragraph (b)—
 - (i) the word “or” immediately following sub-paragraph (i) is repealed, and
 - (ii) after sub-paragraph (i) insert—
 - “(ia) if B has a previous conviction for a relevant foreign offence committed against a person under the age of 16, or”.
- (3) In subsection (5), after paragraph (a) insert—
- “(aa) “a previous conviction for a relevant foreign offence” means a previous conviction by a court in a member State of the European Union other than the United Kingdom for an offence that is equivalent to one listed in paragraph 1, 4, 7, 10, 13 (so far as applying to an offence listed in paragraph 1, 4, 7 or 10) or 14 of schedule 1,”

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(4) After subsection (5) insert—

“(5A) Any issue of equivalence arising in pursuance of subsection (5)(aa) is for the court to determine.

(5B) For that purpose, an offence may be equivalent to one listed in paragraph 1, 4, 7, 10, 13 (so far as applying to an offence listed in paragraph 1, 4, 7 or 10) or 14 of schedule 1 even though, under the law of the member State (or part of the member State) in question, it is an offence—

(a) regardless of the age of the victim, or

(b) only if committed against a person under an age other than 16 years.”>

Kenny MacAskill

540 In section 143, page 138, line 32, at end insert—

<() an order under section (*Convictions by courts in other EU member States*)(2),>

Power of sheriff or JP to grant warrants to police based outside sheriffdom

Kenny MacAskill

420 After section 41, insert—

<Grant of warrants

Grant of warrants for execution by constables and police members of SCDEA

(1) A sheriff or justice of the peace does not lack power or jurisdiction to grant a warrant for execution by a person mentioned in subsection (2) solely because the person is not a constable of a police force for a police area lying wholly or partly in the sheriff’s or justice’s sheriffdom.

(2) The persons referred to in subsection (1) are—

(a) a constable,

(b) a police member of the Scottish Crime and Drug Enforcement Agency.>

Bail conditions – remote monitoring requirements

Kenny MacAskill

132 After section 43, insert—

<Bail conditions: remote monitoring requirements

Sections 24A to 24E of the 1995 Act (bail conditions: remote monitoring) are repealed.>

Kenny MacAskill

197 In schedule 5, page 158, line 36, at end insert <and

(ii) sub-paragraph (b) is repealed.>

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Prosecution on indictment – Scottish Law Officers

Kenny MacAskill

421 In section 44, page 58, line 5, at end insert—

<() The title of section 287 becomes “Demission from office of Lord Advocate and Solicitor General for Scotland”.>

Kenny MacAskill

422 In section 44, page 58, line 6, leave out from <subsection> to <Advocate)> and insert <that section>

Kenny MacAskill

423 In section 44, page 58, line 11, at end insert <and

() after “successor” insert “or the Solicitor General”,>

Kenny MacAskill

424 In section 44, page 58, leave out line 13 and insert—

<() for “in name of” substitute “at the instance of Her Majesty’s Advocate or”, and>

Kenny MacAskill

425 In section 44, page 58, line 17, at end insert—

<(2AA) All indictments which have been raised at the instance of the Solicitor General shall remain effective notwithstanding the holder of the office of Solicitor General subsequently having died or demitted office and may be taken up and proceeded with by his successor or the Lord Advocate.>

Kenny MacAskill

426 In section 44, page 58, line 19, leave out from <as> to end of line 20

Kenny MacAskill

427 In section 44, page 58, line 24, at end insert—

<() in paragraph (a), after “subsection (1)” insert “or (2AA)”,>

Kenny MacAskill

451 In schedule 5, page 152, line 10, at end insert—

<*The Law Officers Act 1944 (c.25)*

In section 2(3) of the Law Officers Act 1944 (Lord Advocate and Solicitor General for Scotland), for the words from “three” to the end substitute “287 of the Criminal Procedure (Scotland) Act 1995 (c.46)”.>

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Dockets and charges in sex cases

Kenny MacAskill

428 After section 46, insert—

<Dockets and charges in sex cases

Dockets and charges in sex cases

After section 288B of the 1995 Act insert—

“Dockets and charges in sex cases

288BA Dockets for charges of sexual offences

- (1) An indictment or a complaint may include a docket which specifies any act or omission that is connected with a sexual offence charged in the indictment or complaint.
- (2) Here, an act or omission is connected with such an offence charged if it—
 - (a) is specifiable by way of reference to a sexual offence, and
 - (b) relates to—
 - (i) the same event as the offence charged, or
 - (ii) a series of events of which that offence is also part.
- (3) The docket is to be in the form of a note apart from the offence charged.
- (4) It does not matter whether the act or omission, if it were instead charged as an offence, could not competently be dealt with by the court (including as particularly constituted) in which the indictment or complaint is proceeding.
- (5) Where under subsection (1) a docket is included in an indictment or a complaint, it is to be presumed that—
 - (a) the accused person has been given fair notice of the prosecutor’s intention to lead evidence of the act or omission specified in the docket, and
 - (b) evidence of the act or omission is admissible as relevant.
- (6) The references in this section to a sexual offence are to—
 - (a) an offence under the Sexual Offences (Scotland) Act 2009,
 - (b) any other offence involving a significant sexual element.

288BB Mixed charges for sexual offences

- (1) An indictment or a complaint may include a charge that is framed as mentioned in subsection (2) or (3) (or both).
- (2) That is, framed so as to comprise (in a combined form) the specification of more than one sexual offence.
- (3) That is, framed so as to—
 - (a) specify, in addition to a sexual offence, any other act or omission, and

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- (b) do so in any manner except by way of reference to a statutory offence.
- (4) Where a charge in an indictment or a complaint is framed as mentioned in subsection (2) or (3) (or both), the charge is to be regarded as being a single yet cumulative charge.
- (5) The references in this section to a sexual offence are to an offence under the Sexual Offences (Scotland) Act 2009.”.>

Remand and committal of children and young persons

Robert Brown

541 In section 47, page 61, line 2, at end insert—

- <(A1) Section 44 of the 1995 Act (detention of children) is amended in accordance with subsections (B1) and (C1).
- (B1) In subsection (1), after “child” insert “aged 16 years or over”.
- (C1) In subsection (2), the words from “(other than” to “this Act)” are repealed.>

Prohibition of personal conduct of case by accused

Kenny MacAskill

429 After section 51, insert—

<Personal conduct of case by accused

Prohibition of personal conduct of case by accused in certain proceedings

- (1) The 1995 Act is amended as follows.
- (2) In section 288C (prohibition of personal conduct of defence in cases of certain sexual offences)—
 - (a) for subsection (1) substitute—
 - “(1) An accused charged with a sexual offence to which this section applies is prohibited from conducting his case in person at, or for the purposes of, any relevant hearing in the course of proceedings (other than proceedings in a JP court) in respect of the offence.
 - (1A) In subsection (1), “relevant hearing” means a hearing at, or for the purposes of, which a witness is to give evidence.”, and
 - (b) subsection (8) is repealed.
- (3) In section 288D (appointment of solicitor by court in cases to which section 288C applies)—
 - (a) in subsection (1), after “proceedings” insert “(other than proceedings in a JP court)”,
 - (b) in subsection (2)(a), for sub-paragraphs (i) and (ii) substitute—

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- (i) the conduct of his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the proceedings; or”, and
 - (c) in subsection (6), for the words from “of the accused’s defence” to the end substitute “referred to in subsection (2)(a) above.”.
- (4) In section 288E (prohibition of personal conduct of defence in certain cases involving child witness under the age of 12)—
 - (a) subsection (1) is repealed,
 - (b) in subsection (2)(b), for “the trial” substitute “any hearing in the course of the proceedings”,
 - (c) after subsection (2) insert—
 - “(2A) The accused is prohibited from conducting his case in person at, or for the purposes of, any hearing at, or for the purposes of, which the child witness is to give evidence.”,
 - (d) in subsection (4), at the end insert “and as if references to a relevant hearing were references to a hearing referred to in subsection (2A) above”,
 - (e) in subsection (6)—
 - (i) for paragraphs (za) and (a) substitute—
 - “(a) that his case at, or for the purposes of, any hearing in the course of the proceedings at, or for the purposes of, which the child witness is to give evidence may be conducted only by a lawyer,”, and
 - (ii) in paragraph (c), for the words from “preliminary” to “trial” substitute “hearing”, and
 - (f) subsection (8) is repealed.
- (5) In section 288F (power to prohibit personal conduct of defence in other cases involving vulnerable witnesses)—
 - (a) in subsection (1), for “the trial” substitute “any hearing in the course of the proceedings”,
 - (b) in subsection (2), for the words from “defence” to the end substitute “case in person at any hearing at, or for the purposes of, which the vulnerable witness is to give evidence.”,
 - (c) in subsection (3)(a), for “trial” substitute “hearing”,
 - (d) in subsection (4), for the words from “after” to the end substitute “in relation to a hearing after, as well as before, the hearing has commenced.”,
 - (e) subsection (4A) is repealed,
 - (f) in subsection (5), at the end insert “and as if references to a relevant hearing were references to any hearing in respect of which an order is made under this section”, and
 - (g) subsection (6) is repealed.>

Kenny MacAskill

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<In section 17A (right of person accused of sexual offence to be told about restriction on conduct of defence: arrest), in subsection (1)—

(a) for paragraphs (za) and (a) substitute—

“(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings may be conducted only by a lawyer,” and

(b) in paragraph (c), for the words from “preliminary” to “trial” substitute “hearing”.>

Kenny MacAskill

455 In schedule 5, page 154, line 5, at end insert—

<In section 35 (judicial examination), in subsection (4A)—

(a) for paragraphs (za) and (a) substitute—

“(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings may be conducted only by a lawyer,” and

(b) in paragraph (c), for the words from “preliminary” to “trial” substitute “hearing”.>

Kenny MacAskill

456 In schedule 5, page 154, line 42, at end insert—

<In section 66 (service and lodging of indictment etc.), in subsection (6A)(a)—

(a) for sub-paragraphs (zi) and (i) substitute—

“(i) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings (including at any commissioner proceedings) may be conducted only by a lawyer,” and

(b) in sub-paragraph (iii), for the words from “preliminary” to “trial” substitute “hearing”.

In section 71 (first diet)—

(a) in subsection (A1), for the words “his defence at the trial” substitute “the conduct of his case at any relevant hearing in the course of the proceedings”,

(b) in subsection (B1)(c), for the words “before the trial diet” substitute “in relation to any hearing in the course of the proceedings”,

(c) in subsection (1A)(a), for “the trial” substitute “any hearing in the course of the proceedings”,

(d) in subsection (1B)(a), for “the trial” substitute “any hearing in the course of the proceedings”,

(e) in subsection (5A)(b), for the words “his defence at the trial” substitute “the conduct of his case at any relevant hearing in the course of the proceedings”, and

(f) after subsection (7), insert—

“(7A) In subsections (A1) and (5A)(b), “relevant hearing” means—

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- (a) in relation to proceedings mentioned in paragraph (a) of subsection (B1), any hearing at, or for the purposes of, which a witness is to give evidence,
- (b) in relation to proceedings mentioned in paragraph (b) of that subsection, a hearing referred to in section 288E(2A),
- (c) in relation to proceedings mentioned in paragraph (c) of that subsection, a hearing in respect of which an order is made under section 288F.”.>

Kenny MacAskill

458 In schedule 5, page 155, line 23, at end insert—

<In section 140 (citation), in subsection (2A)—

(a) for paragraph (a) substitute—

“(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings (including at any commissioner proceedings) may be conducted only by a lawyer,”, and

(b) in paragraph (c), for the words “his defence at the trial” substitute “the conduct of his case at, or for the purposes of, the hearing”.

In section 144 (procedure at first diet), in subsection (3A)—

(a) for paragraph (a) substitute—

“(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings may be conducted only by a lawyer,”, and

(b) in paragraph (c), for the words “his defence at the trial” substitute “the conduct of his case at, or for the purposes of, the hearing”.

In section 146 (plea of not guilty), in subsection (3A)—

(a) for paragraph (a) substitute—

“(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings may be conducted only by a lawyer,”, and

(b) in paragraph (c), for the words “his defence at the trial” substitute “the conduct of his case at, or for the purposes of, the hearing”.>

Kenny MacAskill

459 In schedule 5, page 157, line 36, at end insert—

<*The Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5)*

In the Criminal Procedure (Amendment) (Scotland) Act 2004 the following provisions are repealed—

- (a) in section 4 (prohibition on accused conducting case in person in certain cases), subsection (4),
- (b) section 17 (bail conditions: remote monitoring of restrictions on movements), and
- (c) in the schedule (further modifications of the 1995 Act), paragraph 55.>

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Crown appeals

Kenny MacAskill

- 462** In section 54, page 65, line 30, leave out <the close of the whole of the evidence> and insert <one or other (but not both) of the appropriate events>

Kenny MacAskill

- 463** In section 54, page 65, leave out lines 39 and 40 and insert—
- <() For the purposes of subsection (1), “the appropriate events” are—
- (a) the close of the whole of the evidence,
 - (b) the conclusion of the prosecutor’s address to the jury on the evidence.>

Kenny MacAskill

- 464** In section 54, page 66, line 15, leave out <the prosecutor to amend the indictment> and insert <that the indictment be amended>

Kenny MacAskill

- 465** In section 54, page 66, line 22, after first <of> insert <the judge or>

Kenny MacAskill

- 466** In section 54, page 66, line 29, leave out <the prosecutor to amend the indictment> and insert <that the indictment be amended>

Kenny MacAskill

- 467** In section 54, page 66, line 37, after first <of> insert <the judge or>

Kenny MacAskill

- 468** In section 54, page 66, line 37, at end insert—
- <97D No acquittal on “no reasonable jury” grounds**
- (1) A judge has no power to direct the jury to return a not guilty verdict on any charge on the ground that no reasonable jury, properly directed on the evidence, could convict on the charge.
 - (2) Accordingly, no submission based on that ground or any ground of like effect is to be allowed.>

Kenny MacAskill

- 469** In section 55, page 67, line 4, at end insert—
- <(1A) If, immediately after an acquittal under section 97 or 97B(2)(a), the prosecutor moves for the trial diet to be adjourned for no more than 2 days in order to consider whether to appeal against the acquittal under subsection (1), the court of first instance must grant the motion unless the court considers that there are no arguable grounds of appeal.

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- (1B) If, immediately after the giving of a direction under section 97B(2)(b) or 97C(2), the prosecutor moves for the trial diet to be adjourned for no more than 2 days in order to consider whether to appeal against the direction under subsection (1), the court of first instance must grant the motion unless the court considers that it would not be in the interests of justice to do so.
- (1C) In considering whether it would be in the interests of justice to grant a motion for adjournment under subsection (1B), the court must have regard, amongst other things, to—
- (a) whether, if an appeal were to be made and to be successful, continuing with the diet would have any impact on any subsequent or continued prosecution,
 - (b) whether there are any arguable grounds of appeal.
- (1D) An appeal may not be brought under subsection (1) unless the prosecutor intimates intention to appeal—
- (a) immediately after the acquittal or, as the case may be, the giving of the direction,
 - (b) if a motion to adjourn the trial diet under subsection (1A) or (1B) is granted, immediately upon resumption of the diet, or
 - (c) if such a motion is refused, immediately after the refusal.
- (1E) Subsection (2) applies if—
- (a) the prosecutor intimates an intention to appeal under subsection (1)(a), or
 - (b) the trial diet is adjourned under subsection (1A).>

Kenny MacAskill

- 470** In section 55, page 67, line 5, leave out from beginning to <Court> and insert <Where this subsection applies, the court of first instance must suspend the effect of the acquittal and>

Kenny MacAskill

- 471** In section 55, page 67, line 10, leave out <exceptionally and>

Kenny MacAskill

- 472** In section 55, page 67, line 11, at end insert—

<() The court may, under subsection (2)(b), order the detention of the person in custody only if the court considers that there are arguable grounds of appeal.>

Kenny MacAskill

- 473** In section 55, page 67, leave out lines 25 to 33

Kenny MacAskill

- 474** In section 55, page 68, line 5, leave out <an appeal is brought> and insert <the prosecutor intimates intention to appeal>

Kenny MacAskill

- 475** In section 55, page 68, line 28, leave out <or 107B>

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Kenny MacAskill

476 In section 55, page 69, line 13, at end insert—

- <() However, if the prosecutor moves for the diet to be deserted *pro loco et tempore* in relation to such other offence, the court must grant the motion.>

Kenny MacAskill

477 In section 57, page 69, line 26, leave out <within 7 days after an appeal is brought under section 107A(1)> and insert <where the prosecutor intimates intention to appeal under section 107A(1), within 7 days after the acquittal or direction appealed against>

Kenny MacAskill

514 In schedule 5, page 154, line 5, at end insert—

<In section 23A (bail and liberation where person already in custody)—

- (a) in each of subsections (1) and (4), for “23 or 65(8C)” substitute “23, 65(8C) or 107A(2)(b)”, and
(b) in subsection (3), for “22A(3) or 23(7)” substitute “22A(3), 23(7) or 107A(2)(b)”.>

Retention of samples etc. – adults

Kenny MacAskill

478 In section 58, page 71, line 4, leave out from <18(7A)> to end of line 5 and insert <18 (prints, samples etc. in criminal investigations)—

- () in subsection (3), for “section 18A” substitute “sections 18A to 18C”,
() in subsection (7A), for “sections 19 to 20” substitute “, subject to the modification in subsection (7AA), sections 18A to 19C”, and
() after subsection (7A) insert—

“(7AA)The modification is that for the purposes of section 19C as it applies in relation to relevant physical data taken from or provided by a person outwith Scotland, subsection (7A) is to be read as if in paragraph (d) the words from “created” to the end were omitted.”.>

James Kelly

404 In section 58, page 71, line 4, leave out from <18(7A)> to <Act),> in line 5 and insert <18 (prints, samples etc. in criminal investigations)—

- () in subsection (3), the words “or on the conclusion of such proceedings otherwise than with a conviction or an order under section 246(3) of this Act” are repealed, and
() in subsection (7A),>

James Kelly

405 In section 58, page 71, leave out line 6 and insert—

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<() The title of section 18A becomes “Retention of samples, etc.: persons prosecuted but not convicted etc.”, and in that section>

Kenny MacAskill

479 In section 58, page 71, leave out lines 7 to 10 and insert—

<() for subsection (1) substitute—

“(1) This section applies to—

- (a) relevant physical data taken or provided under section 18(2), and
- (b) any sample, or any information derived from a sample, taken under section 18(6) or (6A),

where the condition in subsection (2) is satisfied.”,>

James Kelly

406 In section 58, page 71, line 11, after <(2)> insert—

<() the words “in respect of a relevant sexual offence or a relevant violent offence” are repealed, and

()>

Kenny MacAskill

480 In section 58, page 71, line 13, leave out from <after> to <data,”> and insert <for “sample or information” substitute “relevant physical data, sample or information derived from a sample”,>

James Kelly

407 In section 58, page 71, line 13, at end insert—

<() in subsection (4)(a), for “3” substitute “6”,>

Kenny MacAskill

481 In section 58, page 71, line 14, leave out from beginning to <data,”> in line 15 and insert—

<() after subsection (8) insert—

“(8A) If the sheriff principal allows an appeal against the refusal of an application under subsection (5), the sheriff principal may make an order amending, or further amending, the destruction date.

(8B) An order under subsection (8A) must not specify a destruction date more than 2 years later than the previous destruction date.”,

() in subsection (10), for “sample or information” substitute “relevant physical data, sample or information derived from a sample”>

Kenny MacAskill

482 In section 58, page 71, line 18, at end insert <and

() in the definition of “relevant sexual offence” and “relevant violent offence”, after “have” insert “, subject to the modification in subsection (12),”, and

() after subsection (11) insert—

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“(12) The modification is that the definition of “relevant sexual offence” in section 19A(6) is to be read as if for paragraph (g) there were substituted—

“(g) public indecency if it is apparent from the offence as charged in the indictment or complaint that there was a sexual aspect to the behaviour of the person charged;”.>

James Kelly

408 In section 58, page 71, line 18, at end insert <, and

() the definition of “relevant sexual offence” and “relevant violent offence” is repealed.>

Kenny MacAskill

494 After section 59, insert—

<Extension of section 19A of 1995 Act

In section 19A(6) of the 1995 Act (definitions of certain expressions for purposes of section 19A)—

(a) in the definition of “relevant sexual offence”, for paragraph (g) substitute—

“(g) public indecency if the court, in imposing sentence or otherwise disposing of the case, determined for the purposes of paragraph 60 of Schedule 3 to the Sexual Offences Act 2003 (c.42) that there was a significant sexual aspect to the offender’s behaviour in committing the offence;”, and

(b) in paragraph (h) of the definition of “relevant violent offence”, after subparagraph (iv), insert—

“(v) section 47(1) (possession of offensive weapon in public place), 49(1) (possession of article with blade or point in public place), 49A(1) or (2) (possession of article with blade or point or offensive weapon on school premises) or 49C(1) (possession of offensive weapon or article with blade or point in prison) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39);”.>

Kenny MacAskill

499 In section 60, page 74, line 18, at end insert <and

() relevant physical data, a sample or information derived from a sample taken from, or provided by, a person outwith Scotland which is given by any person to—

(i) a police force,

(ii) the Scottish Police Services Authority, or

(iii) a person acting on behalf of a police force.>

Kenny MacAskill

502 In section 60, page 74, line 23, at end insert—

<(2A) Subsections (2B) and (2C) apply to relevant physical data, a sample or information derived from a sample falling within any of paragraphs (a) to (d) of subsection (1) (“relevant material”).

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(2B) If the relevant material is held by a police force, the Scottish Police Services Authority or a person acting on behalf of a police force, the police force or, as the case may be, the Authority or person may give the relevant material to another person for use by that person in accordance with subsection (2).

(2C) A police force, the Scottish Police Services Authority or a person acting on behalf of a police force may, in using the relevant material in accordance with subsection (2), check it against other relevant physical data, samples and information derived from samples received from another person.>

Kenny MacAskill

503 In section 60, page 74, line 33, leave out <the United Kingdom> and insert <Scotland>

Kenny MacAskill

504 In section 60, page 74, line 35, leave out <the United Kingdom> and insert <Scotland>

Kenny MacAskill

512 In schedule 5, page 153, line 35, at end insert—

<In section 18(8)(c) (power to take prints etc. under authority of a warrant unaffected by section), for “prints, impressions” substitute “relevant physical data”.

In section 19(1)(b) (samples etc. taken from person convicted of offence), the words “impression or”, in both places where they occur, are repealed.>

Kenny MacAskill

513 In schedule 5, page 154, line 4, at end insert—

<Section 20 (use of prints, samples etc.) is repealed.>

Retention of samples etc. – alternatives to prosecution

Stewart Maxwell

418 After section 58, insert—

<Retention of samples etc. where offer under sections 302 to 303ZA accepted

After section 18A of the 1995 Act insert—

“18AA Retention of samples etc. where offer under sections 302 to 303ZA accepted

(1) This section applies to—

(a) relevant physical data taken from or provided by a person under section 18(2), and

(b) any sample, or any information derived from a sample, taken from a person under section 18(6) or (6A),

where the conditions in subsection (2) are satisfied.

(2) The conditions are—

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- (a) the relevant physical data or sample was taken from or provided by the person while the person was under arrest or being detained in connection with the offence or offences in relation to which a relevant offer is issued to the person, and
- (b) the person—
 - (i) accepts a relevant offer, or
 - (ii) in the case of a relevant offer other than one of the type mentioned in paragraph (d) of subsection (3), is deemed to accept a relevant offer.
- (3) In this section “relevant offer” means—
 - (a) a conditional offer under section 302,
 - (b) a compensation offer under section 302A,
 - (c) a combined offer under section 302B, or
 - (d) a work offer under section 303ZA.
- (4) Subject to subsections (6) and (7) and section 18AB(9) and (10), the relevant physical data, sample or information derived from a sample must be destroyed no later than the destruction date.
- (5) In subsection (4), “destruction date” means—
 - (a) in relation to a relevant offer that relates only to—
 - (i) a relevant sexual offence,
 - (ii) a relevant violent offence, or
 - (iii) both a relevant sexual offence and a relevant violent offence,the date of expiry of the period of 3 years beginning with the date on which the relevant offer is issued or such later date as an order under section 18AB(2) or (6) may specify,
 - (b) in relation to a relevant offer that relates to—
 - (i) an offence or offences falling within paragraph (a), and
 - (ii) any other offence,the date of expiry of the period of 3 years beginning with the date on which the relevant offer is issued or such later date as an order under section 18AB(2) or (6) may specify,
 - (c) in relation to a relevant offer that does not relate to an offence falling within paragraph (a), the date of expiry of the period of 2 years beginning with the date on which the relevant offer is issued.
- (6) If a relevant offer is recalled by virtue of section 302C(5) or a decision to uphold it is quashed under section 302C(7)(a), all record of the relevant physical data, sample and information derived from a sample must be destroyed as soon as possible after—
 - (a) the prosecutor decides not to issue a further relevant offer to the person,
 - (b) the prosecutor decides not to institute criminal proceedings against the person, or

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- (c) the prosecutor institutes criminal proceedings against the person and those proceedings conclude otherwise than with a conviction or an order under section 246(3).
- (7) If a relevant offer is set aside by virtue of section 303ZB, all record of the relevant physical data, sample and information derived from a sample must be destroyed as soon as possible after the setting aside.
- (8) In this section, “relevant sexual offence” and “relevant violent offence” have, subject to the modification in subsection (9), the same meanings as in section 19A(6) and include any attempt, conspiracy or incitement to commit such an offence.
- (9) The modification is that the definition of “relevant sexual offence” in section 19A(6) is to be read as if for paragraph (g) there were substituted—
 - “(g) public indecency if it is apparent from the relevant offer (as defined in section 18AA(3)) relating to the offence that there was a sexual aspect to the behaviour of the person to whom the relevant offer is issued;”.

18AB Section 18AA: extension of retention period where relevant offer relates to certain sexual or violent offences

- (1) This section applies where the destruction date for relevant physical data, a sample or information derived from a sample falls within section 18AA(5)(a) or (b).
- (2) On a summary application made by the relevant chief constable within the period of 3 months before the destruction date, the sheriff may, if satisfied that there are reasonable grounds for doing so, make an order amending, or further amending, the destruction date.
- (3) An application under subsection (2) may be made to any sheriff—
 - (a) in whose sheriffdom the appropriate person resides,
 - (b) in whose sheriffdom that person is believed by the applicant to be, or
 - (c) to whose sheriffdom the person is believed by the applicant to be intending to come.
- (4) An order under subsection (2) must not specify a destruction date more than 2 years later than the previous destruction date.
- (5) The decision of the sheriff on an application under subsection (2) may be appealed to the sheriff principal within 21 days of the decision.
- (6) If the sheriff principal allows an appeal against the refusal of an application under subsection (2), the sheriff principal may make an order amending, or further amending, the destruction date.
- (7) An order under subsection (6) must not specify a destruction date more than 2 years later than the previous destruction date.
- (8) The sheriff principal’s decision on an appeal under subsection (5) is final.
- (9) Section 18AA(4) does not apply where—
 - (a) an application under subsection (2) has been made but has not been determined,
 - (b) the period within which an appeal may be brought under subsection (5) against a decision to refuse an application has not elapsed, or

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- (c) such an appeal has been brought but has not been withdrawn or finally determined.
- (10) Where—
- (a) the period within which an appeal referred to in subsection (9)(b) may be brought has elapsed without such an appeal being brought,
 - (b) such an appeal is brought and is withdrawn or finally determined against the appellant, or
 - (c) an appeal brought under subsection (5) against a decision to grant an application is determined in favour of the appellant,
- the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the period has elapsed, or, as the case may be, the appeal is withdrawn or determined.

- (11) In this section—

“appropriate person” means the person from whom the relevant physical data was taken or by whom it was provided or from whom the sample was taken,

“destruction date” has the meaning given by section 18AA(5),

“the relevant chief constable” has the same meaning as in subsection (11) of section 18A, with the modification that references to the person referred to in subsection (2) of that section are references to the appropriate person.”.>

Stewart Maxwell

- 419 After section 58, insert—

<Retention of samples etc. taken or provided in connection with certain fixed penalty offences

After section 18A of the 1995 Act insert—

“18AC Retention of samples etc. taken or provided in connection with certain fixed penalty offences

- (1) This section applies to—
 - (a) relevant physical data taken from or provided by a person under section 18(2), and
 - (b) any sample, or any information derived from a sample, taken from a person under section 18(6) or (6A),where the conditions in subsection (2) are satisfied.
- (2) The conditions are—
 - (a) the person was arrested or detained in connection with a fixed penalty offence,
 - (b) the relevant physical data or sample was taken from or provided by the person while the person was under arrest or being detained in connection with that offence,

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- (c) after the relevant physical data or sample was taken from or provided by the person, a constable gave the person under section 129(1) of the 2004 Act—
 - (i) a fixed penalty notice in respect of that offence (the “main FPN”), or
 - (ii) the main FPN and one or more other fixed penalty notices in respect of fixed penalty offences arising out of the same circumstances as the offence to which the main FPN relates, and
- (d) the person, in relation to the main FPN and any other fixed penalty notice of the type mentioned in paragraph (c)(ii)—
 - (i) pays the fixed penalty, or
 - (ii) pays any sum that the person is liable to pay by virtue of section 131(5) of the 2004 Act.
- (3) Subject to subsections (4) and (5), the relevant physical data, sample or information derived from a sample must be destroyed before the end of the period of 2 years beginning with—
 - (a) where subsection (2)(c)(i) applies, the day on which the main FPN is given to the person,
 - (b) where subsection (2)(c)(ii) applies and—
 - (i) the main FPN and any other fixed penalty notice are given to the person on the same day, that day,
 - (ii) the main FPN and any other fixed penalty notice are given to the person on different days, the later day.
- (4) Where—
 - (a) subsection (2)(c)(i) applies, and
 - (b) the main FPN is revoked under section 133(1) of the 2004 Act,the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the revocation.
- (5) Where—
 - (a) subsection (2)(c)(ii) applies, and
 - (b) the main FPN and any other fixed penalty notices are revoked under section 133(1) of the 2004 Act,the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the revocations.
- (6) In this section—
 - “the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),
 - “fixed penalty notice” has the meaning given by section 129(2) of the 2004 Act,
 - “fixed penalty offence” has the meaning given by section 128(1) of the 2004 Act.”.>

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Retention of samples etc. – children referred to children’s hearings

James Kelly

- 409** In section 59, page 72, line 19, leave out from <such> to second <offence> and insert—
- <() an offence of assault, categorised by the Principal Reporter as grave, or
 - () such—
 - (i) other relevant violent offence, or
 - (ii) relevant sexual offence.>

James Kelly

- 410** In section 59, page 72, leave out lines 21 to 36

Robert Brown

- 380** In section 59, page 72, leave out lines 21 and 22, and insert—
- <(7) Where this section applies, the sheriff may, on summary application by the relevant chief constable, make an order that, subject to section 18C(6) and (7), the relevant physical data, sample or the information must be destroyed no later than the destruction date.
 - (7A) The sheriff may only make the order referred to in subsection (7) if satisfied that the child continues to pose a risk to public safety and that retention of the relevant physical data, sample or information until the destruction date is justified by that risk.>

Kenny MacAskill

- 483** In section 59, page 72, line 21, leave out <18C(5) and (6)> and insert <18C(6) and (7)>

Kenny MacAskill

- 484** In section 59, page 72, line 21, leave out <the information> and insert <information derived from a sample>

Robert Brown

- 545** In section 59, page 72, leave out lines 25 to 36 and insert <the date on which the relevant offence mentioned in subsection (3), (4) or, as the case may be, (5) was committed; or
- (b) such later date as an order under section 18C(1) may specify.
 - () For the purposes of subsection (8)(a)—
 - (a) if two or more relevant offences were committed on different dates, it is the most recent of those offences that is to be taken as the offence constituting the ground of referral; and
 - (b) if a relevant offence was committed on more than one date, the date on which the offence was committed is to be taken as the most recent of those dates.>

THIS IS NOT THE MARSHALLED LIST

Robert Brown

381 In section 59, page 72, line 40, at end insert—

<“relevant chief constable” has the same meaning as in section 18A(11), with the modification that references to the person referred to in subsection (2) of that section are references to the child referred to in subsection (1);>

Kenny MacAskill

485 In section 59, page 73, line 1, after <have> insert <, subject to the modification in subsection (11),>

Kenny MacAskill

486 In section 59, page 73, line 3, at end insert—

<(11) The modification is that the definition of “relevant sexual offence” in section 19A(6) is to be read as if for paragraph (g) there were substituted—

“(g) public indecency if it is apparent from the ground of referral relating to the offence that there was a sexual aspect to the behaviour of the child;”.>

James Kelly

411 In section 59, page 73, leave out lines 4 to 40

Robert Brown

546 In section 59, page 73, line 7, leave out from <there> to end of line 8 and insert <at least one ground for doing so, specified by virtue of subsection (1A), is established, make an order amending (or further amending) the destruction date.

<(1A) The Scottish Ministers must, by regulations made by statutory instrument, specify the grounds on which an order under subsection (1) may be made.

(1B) Before making regulations under subsection (1A), the Scottish Ministers must consult such persons as they consider appropriate.

(1C) A statutory instrument containing regulations under subsection (1A) is subject to annulment in pursuance of a resolution of the Scottish Parliament.>

Kenny MacAskill

487 In section 59, page 73, line 17, at end insert—

<(4A) If the sheriff principal allows an appeal against the refusal of an application under subsection (1), the sheriff principal may make an order amending, or further amending, the destruction date.

(4B) An order under subsection (4A) must not specify a destruction date more than 2 years later than the previous destruction date.>

Kenny MacAskill

488 In section 59, page 73, line 23, leave out <expired> and insert <elapsed>

Kenny MacAskill

489 In section 59, page 73, line 28, leave out <expired> and insert <elapsed>

THIS IS NOT THE MARSHALLED LIST

Kenny MacAskill

- 490 In section 59, page 73, line 33, after <information> insert <derived from a sample>

Kenny MacAskill

- 491 In section 59, page 73, line 34, leave out from <practicable> to end of line and insert <possible after the period has elapsed or, as the case may be, the appeal is withdrawn or determined.>

Kenny MacAskill

- 492 In section 59, page 73, line 37, leave out <section 18A(11)> and insert <subsection (11) of section 18A>

Robert Brown

- 382 In section 59, page 73, line 37, leave out from <18A(11)> to end of line 40 and insert <18B(10)>

Kenny MacAskill

- 493 In section 59, page 74, line 1, leave out subsection (2)

James Kelly

- 412 In section 59, page 74, line 2, leave out from <after> to end of line and insert <at beginning insert "Except where section 18B applies and">

Use of samples etc.

Kenny MacAskill

- 495 In section 60, page 74, line 6, leave out <This section> and insert <Subsection (2)>

Kenny MacAskill

- 496 In section 60, page 74, line 7, leave out <, or any information derived from relevant physical data,>

Kenny MacAskill

- 497 In section 60, page 74, line 12, leave out <, a sample or an impression> and insert <or a sample>

Kenny MacAskill

- 498 In section 60, page 74, line 17, leave out <relevant physical data or a sample or impression> and insert <a sample>

Kenny MacAskill

- 500 In section 60, page 74, line 19, leave out <, impression or information> and insert <or information derived from a sample>

Kenny MacAskill

- 501 In section 60, page 74, line 23, leave out <, sample or impression> and insert <or sample>

THIS IS NOT THE MARSHALLED LIST

Kenny MacAskill

- 505** In section 60, page 74, line 38, leave out from <, impressions> to end of line 39 and insert <or information derived from a sample>

Kenny MacAskill

- 506** In section 60, page 75, leave out line 2

Kenny MacAskill

- 507** In section 60, page 75, leave out line 5

Kenny MacAskill

- 508** In section 60, page 75, line 7, leave out <, impression or relevant physical data>

Kenny MacAskill

- 509** In section 60, page 75, line 12, leave out <, impression>

Kenny MacAskill

- 510** In section 60, page 75, line 14, leave out from beginning to <impression"> in line 25 and insert <, after "information" insert "derived from a sample",
- () in subsection (5)(b), the words "with all information derived from them" are repealed,
 - () in subsection (6)(a), for "it or them" substitute "the sample",
 - () in subsection (7)(a), the words "or relevant physical data", in the second place where they occur, are repealed,>

Scottish Criminal Cases Review Commission – grounds for appeal

Kenny MacAskill

- 133** In section 61, page 76, line 6, after <reasons> insert <for making the reference>

Kenny MacAskill

- 134** In section 61, page 76, line 9, leave out from <additional> to end of line 10 and insert <the appellant to found the appeal on additional grounds>

Kenny MacAskill

- 135** In section 61, page 76, line 19, leave out <additional grounds to be raised> and insert <the appeal to be founded on additional grounds>

Prior statements by witnesses – abolition of competence test

Kenny MacAskill

- 430** Before section 62, insert—

THIS IS NOT THE MARSHALLED LIST

<Admissibility of prior statements of witnesses: abolition of competence test

- (1) This section applies in relation to a prior statement made by a witness before the commencement of section 24 of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) (“the 2004 Act”) (which abolishes the competence test for witnesses in criminal and civil proceedings).
- (2) For the purpose of the application of subsection (2)(c) of section 260 of the 1995 Act (admissibility of prior statement depends on competence of the witness at the time of the statement) in relation to the statement, section 24 of the 2004 Act is taken to have been in force at the time the statement was made.
- (3) In this section, “prior statement” has the meaning it has in section 260 of the 1995 Act.>

Witness statements – use during trial

Robert Brown

- 383** In section 62, page 77, line 1, after <may> insert <, if satisfied that there is good reason to do so,>

Child witnesses in proceedings for people trafficking offences

Kenny MacAskill

- 384** After section 64, insert—

<Child witnesses in proceedings for people trafficking offences

In section 271 of the 1995 Act (vulnerable witnesses: main definitions)—

- (a) in subsection (1)(a), for “age of 16” substitute “relevant age”, and
- (b) after subsection (1), insert—

“(1A) In subsection (1)(a), “the relevant age” means—

- (a) in the case of a person who is giving or is to give evidence in proceedings for an offence under section 22 of the Criminal Justice (Scotland) Act 2003 (asp 7) (trafficking in prostitution etc.) or section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) (trafficking people for exploitation), the age of 18, and
- (b) in any other case, the age of 16.”>

Witness anonymity orders

Kenny MacAskill

- 431** In section 66, page 80, line 13, leave out from <other> to end of line 16 and insert <the jury>

Kenny MacAskill

- 432** In section 66, page 80, line 18, leave out <any persons within paragraph (a)(i) to (iii)> and insert <the judge or the jury>

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Kenny MacAskill

433 In section 66, page 81, line 6, leave out <material> and insert <information>

Kenny MacAskill

434 In section 66, page 81, line 8, leave out <may> and insert <must>

Kenny MacAskill

435 In section 66, page 81, line 12, leave out <material”> and insert <information”>

Kenny MacAskill

436 In section 66, page 82, line 16, leave out <the weight of>

Kenny MacAskill

437 In section 66, page 82, line 18, leave out <the sole or decisive evidence> and insert <material in>

Kenny MacAskill

438 In section 66, page 82, line 36, leave out <warning> and insert <direction>

Kenny MacAskill

439 In section 66, page 83, leave out lines 33 to 36

Kenny MacAskill

440 In schedule 3, page 148, line 28, leave out <treat the conviction as unsafe> and insert <quash the conviction>

Kenny MacAskill

441 In schedule 3, page 148, line 31, leave out <treat the conviction as unsafe> and insert <quash the conviction>

European evidence warrants

Kenny MacAskill

442 After section 67, insert—

<European evidence warrants

- (1) The Scottish Ministers may by order make provision for the purposes of and in connection with implementing any obligations of the United Kingdom created by or arising under the Framework Decision (so far as they have effect in or as regards Scotland).
- (2) The provision may, in particular, confer functions—
 - (a) on the Scottish Ministers,
 - (b) on the Lord Advocate,
 - (c) on other persons.
- (3) An order under subsection (1) may modify any enactment.

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- (4) An order under subsection (1) may contain provision creating offences and a person who commits such an offence is liable to such penalties, not exceeding those mentioned in subsection (5), as are provided for in the order.
- (5) Those penalties are—
 - (a) on conviction on indictment, imprisonment for a period not exceeding 2 years, or a fine, or both,
 - (b) on summary conviction, imprisonment for a period not exceeding 12 months, or a fine not exceeding the statutory maximum, or both.
- (6) In this section, the “Framework Decision” means Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters.>

Kenny MacAskill

450 In section 143, page 138, line 32, at end insert—

<() an order under section (*European evidence warrants*)(1),>

Jurors in criminal trials

Kenny MacAskill

443 Before section 68, insert—

<Lists of jurors

- (1) The 1995 Act is amended as follows.
- (2) In section 84 (juries: returns of jurors and preparation of lists)—
 - (a) in subsection (3), for “list” substitute “lists”,
 - (b) for subsection (4) substitute—
 - “(4) For the purpose of a trial in the sheriff court, the sheriff principal must furnish the clerk of court with a list of names, containing the number of persons required, from lists of potential jurors of—
 - (a) the sheriff court district in which the trial is to be held (the “local district”), and
 - (b) if the sheriff principal considers it appropriate, any other sheriff court district or districts in the sheriffdom in which the trial is to be held (“other districts”).
 - (4A) Where the sheriff principal furnishes a list containing names of potential jurors of other districts, the sheriff principal may determine the proportion as between the local district and the other districts in which jurors are to be summoned.”,
 - (c) in subsection (5), for “list”, in both places where it occurs, substitute “lists”, and
 - (d) subsection (7) is repealed.
- (3) In section 85(4) (juries: citation and attendance of jurors)—
 - (a) for the words from the beginning to “shall”, in the first place where it occurs, substitute “The sheriff clerk of—

THIS IS NOT THE MARSHALLED LIST

- (a) the sheriffdom in which the High Court is to sit, or
 - (b) the sheriff court district in which a trial in the sheriff court is to be held, shall”, and
- (b) the word “such”, in the first place where it occurs, is repealed.>

David McLetchie

- 415** In section 68, page 86, line 14, leave out from <for> to <relevant”> and insert <at beginning insert “subject to subsection (1A),”>

David McLetchie

- 416** In section 68, page 86, leave out lines 17 to 19 and insert—
- <“(1A) In relation to criminal proceedings, a person is qualified and liable to serve as a juror despite being over 65 years of age.”>

Kenny MacAskill

- 511** After section 68, insert—

<Excusal from jury service

- (1) The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 is amended as follows.
- (2) In section 1 (qualification of jurors)—
 - (a) in subsection (1), after “below” insert “and to section 1A”,
 - (b) in subsection (2), after “service” in the second place where it occurs insert “in relation to civil proceedings”,
 - (c) in subsection (3), after “service” in the first place where it occurs insert “in relation to civil proceedings”,
 - (d) in subsection (5), after “above” insert “or under section 1A”, and
 - (e) in subsection (6), after paragraph (a) insert—
 - “(aa) section 1A;”.

- (3) After section 1 insert—

“1A Excusal of jurors in relation to criminal proceedings

- (1) A person who is qualified under section 1(1) but is among the persons listed in Part III of Schedule 1 to this Act (being persons excusable as of right from jury service) is to be excused from jury service in relation to criminal proceedings on any occasion where the person—
 - (a) has been required to provide information under section 3(2) of the Jurors (Scotland) Act 1825 (c.22); and
 - (b) gives written notice to the sheriff principal that the person wishes to be excused, before the end of the period of 7 days beginning with the day on which the person receives the requirement.
- (2) A person who is qualified under section 1(1) but is among the persons listed in Group C of Part III of Schedule 1 to this Act is to be excused from jury service in relation to criminal proceedings on any occasion where—

THIS IS NOT THE MARSHALLED LIST

- (a) the person has been required to provide information under section 3(2) of the Jurors (Scotland) Act 1825; and
 - (b) the person's commanding officer certifies to the sheriff principal that it would be prejudicial to the efficiency of the force of which the person is a member were the person required to be absent from duty."
- (4) In section 3(1)(a) (offences in connection with jury service), after "been" insert "required to provide information under section 3(2) of the Jurors (Scotland) Act 1825 or".>

David McLetchie

- 417 In section 69, page 86, line 30, at end insert <and
() persons who have attained the age of 71;>

Data matching for detection of fraud etc.

Kenny MacAskill

- 136 In section 70, page 89, line 34, leave out <and Wales>

Kenny MacAskill

- 137 In section 70, page 90, line 21, leave out from <body> to end of line 23 and insert <health and social care body mentioned in paragraphs (a) to (e) of section 1(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c.1).>

Collection of information on criminal injuries

Robert Brown

- 551 After section 71, insert—

<Collection of information on criminal injuries

Duty of Health Boards to collect etc. information on criminal injuries

- (1) The Scottish Ministers may make regulations requiring every Health Board to—
 - (a) collect information on criminal injuries treated in or otherwise coming to the attention of relevant hospitals, and
 - (b) provide that information to the relevant chief constable.
- (2) The Scottish Ministers must make the first regulations under subsection (1) before the expiry of 12 months beginning with the day of Royal Assent.
- (3) Regulations under subsection (1) must include provision that any information provided to a relevant chief constable must be in such a form that persons who have sustained criminal injuries cannot be identified.
- (4) Regulations under subsection (1) may include provision about—
 - (a) the criminal injuries about which information is to be collected (including by reference to the offences involved),

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- (b) the information on such injuries which is to be collected (including information as to the places at which, and circumstances in which, those injuries are sustained),
 - (c) the types of hospitals from which such information is to be collected (including the departments within such hospitals from which information is to be collected),
 - (d) the times at which and manner in which such information is to be provided to relevant chief constables.
- (5) In this section—
- “criminal injuries” means injuries which are, or are suspected of having been, directly attributable to the commission of an offence involving violence,
 - “Health Board” means a board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c.29),
 - “relevant chief constable” means the chief constable for the police force whose area comprises or includes all or part of the Health Board’s area,
 - “relevant hospitals” means hospitals the administration of which is the Health Board’s responsibility.>

Closure of premises associated with human exploitation etc. (minor corrections etc.)

Kenny MacAskill

- 138** In section 72, page 94, line 29, leave out <Law> and insert <Justice>

Kenny MacAskill

- 139** In section 72, page 94, line 41, leave out <27> and insert <37>

Kenny MacAskill

- 140** In section 72, page 94, line 42, leave out <penetrative>

Kenny MacAskill

- 141** In section 72, page 95, line 1, leave out <31> and insert <42>

Kenny MacAskill

- 142** In section 72, page 95, line 2, leave out <35> and insert <46>

Kenny MacAskill

- 144** In section 72, page 95, line 14, leave out <42> and insert <54>

Kenny MacAskill

- 198** In schedule 5, page 159, line 14, leave out <134> and insert <156>

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Foreign travel orders – surrender of passports

Kenny MacAskill

444 In section 74, page 96, line 23, after <station> insert <in Scotland>

Kenny MacAskill

445 In section 74, page 97, line 5, leave out from <a> to end of line and insert—

- <(a) a requirement under section 117A(2) (surrender of passports: England and Wales and Northern Ireland), or
- (b) a requirement under section 117B(2) (surrender of passports: Scotland).”.>

Kenny MacAskill

446 In section 74, page 97, line 5, at end insert—

- <(1C) A person may be prosecuted, tried and punished for any offence under subsection (1B)—
 - (a) in any sheriff court district in which the person is apprehended or is in custody, or
 - (b) in such sheriff court district as the Lord Advocate may determine,as if the offence had been committed in that district (and the offence is, for all purposes incidental to or consequential on the trial or punishment, to be deemed to have been committed in that district).”.>

Sex offender notification requirements

Kenny MacAskill

145 After section 74, insert—

<Sex offender notification requirements

Sex offender notification requirements

- (1) The Sexual Offences Act 2003 (c.42) is amended as follows.
- (2) In section 85 (notification requirements: periodic notification)—
 - (a) in subsection (1), for “period of one year” substitute “applicable period”,
 - (b) in subsection (3), for “period referred to in subsection (1)” substitute “applicable period”, and
 - (c) after subsection (4) insert—
 - “(5) In this section, the “applicable period” means—
 - (a) in any case where subsection (6) applies to the relevant offender, such period not exceeding one year as the Scottish Ministers may prescribe in regulations, and
 - (b) in any other case, the period of one year.

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- (6) This subsection applies to the relevant offender if the last home address notified by the offender under section 83(1) or 84(1) or subsection (1) was the address or location of such a place as is mentioned in section 83(7)(b).”.
- (3) In section 86 (notification requirements: travel outside the United Kingdom), subsection (4) is repealed.
- (4) In section 87 (method of notification and related matters), subsection (6) is repealed.
- (5) In section 96 (information about release or transfer), subsection (4) is repealed.
- (6) In section 138 (orders and regulations)—
 - (a) in subsection (2), after “84,” insert “85,” and
 - (b) after subsection (3) insert—
 - “(4) Orders or regulations made by the Scottish Ministers under this Act may—
 - (a) make different provision for different purposes,
 - (b) include supplementary, incidental, consequential, transitional, transitory or saving provisions.”.>

Risk of sexual harm orders – spent convictions

Kenny MacAskill

146 After section 75, insert—

<Risk of sexual harm orders: spent convictions

In section 7 of the Rehabilitation of Offenders Act 1974 (c.53) (limitations on rehabilitation under the Act), in subsection (2), after paragraph (bb) insert—

“(bc) in any proceedings on an application under section 2, 4 or 5 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) or in any appeal under section 6 of that Act;”.>

Police and SCDEA – authorisation of surveillance

Kenny MacAskill

523 In section 77, page 98, leave out lines 5 to 10

Kenny MacAskill

524 In section 77, page 98, line 14, leave out from <(including> to <operation)> in line 15

Kenny MacAskill

525 In section 77, page 98, line 22, at end insert—

<() After that section insert—

“10A Authorisation of surveillance: joint surveillance operations

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In the case of a joint surveillance operation, where authorisation is sought for the carrying out of any form of conduct to which this Act applies, authorisation may be granted by any one of the persons having power to grant authorisation for the carrying out of that conduct.”.>

Kenny MacAskill

526 In section 77, page 98, line 27, at end insert—

<() In section 14 (approval required for authorisations to take effect)—

(a) in subsection (5)(b), after “General” insert “or the Deputy Director General”, and

(b) subsection (7) is repealed.>

Kenny MacAskill

527 In section 77, page 98, line 27, at end insert—

<() In section 16 (appeals against decisions by Surveillance Commissioners), in subsection (1), after “General” insert “or the Deputy Director General”.>

Kenny MacAskill

528 In section 77, page 98, line 30, leave out from <, where> to <surveillance,> in line 31

Police and SCDEA – authorisation of interference with property

Kenny MacAskill

529 In section 78, page 98, line 39, leave out <(3)> and insert <(3A)>

Kenny MacAskill

530 In section 78, page 99, line 1, leave out <(3A)> and insert <(3AA)>

Kenny MacAskill

531 In section 78, page 99, line 8, leave out <or>

Kenny MacAskill

532 In section 78, page 99, line 18, leave out <(3A)> and insert <(3AA)>

Kenny MacAskill

533 In section 78, page 99, line 23, at end insert—

<() in paragraph (cc) of subsection (6), after “General” insert “, or Deputy Director General,”.>

Kenny MacAskill

534 In section 78, page 99, line 26, leave out <(5)(a)> and insert <(5)>

Kenny MacAskill

535 In section 78, page 99, line 26, leave out <“where> and insert <“Where>

THIS IS NOT THE MARSHALLED LIST

Kenny MacAskill

- 536 In section 78, page 99, line 29, after <operation,> insert <the person referred to in subsection (2)(h) is>

Enhanced criminal record certificates: disclosure of sex offender notification requirements

Kenny MacAskill

- 537 In section 79, page 99, line 39, at end insert—
- <() In section 113B (enhanced criminal record certificates), in subsection (3), for the words from “, or” immediately following paragraph (a) to the end of paragraph (b), substitute “(or states that there is no such matter or information), and
- (b) if the applicant is subject to notification requirements under Part 2 of the Sexual Offences Act 2003 (c.42), states that fact.”.>

Kenny MacAskill

- 538 In section 79, page 100, line 1, leave out <section 113B> and insert <that section>

Rehabilitation of offenders – spent alternatives to prosecution

Kenny MacAskill

- 447 After section 79, insert—

<Rehabilitation of offenders

Spent alternatives to prosecution: Rehabilitation of Offenders Act 1974

- (1) The Rehabilitation of Offenders Act 1974 (c.53) is amended as follows.
- (2) After section 8A (protection afforded to spent cautions), insert—

“8B Protection afforded to spent alternatives to prosecution: Scotland

- (1) For the purposes of this Act, a person has been given an alternative to prosecution in respect of an offence if the person (whether before or after the commencement of this section)—
- (a) has been given a warning in respect of the offence by—
- (i) a constable in Scotland, or
- (ii) a procurator fiscal,
- (b) has accepted, or is deemed to have accepted—
- (i) a conditional offer issued in respect of the offence under section 302 of the Criminal Procedure (Scotland) Act 1995 (c.46), or
- (ii) a compensation offer issued in respect of the offence under section 302A of that Act,
- (c) has had a work order made against the person in respect of the offence under section 303ZA of that Act,

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- (d) has been given a fixed penalty notice in respect of the offence under section 129 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),
 - (e) has accepted an offer made by a procurator fiscal in respect of the offence to undertake an activity or treatment or to receive services or do any other thing as an alternative to prosecution, or
 - (f) in respect of an offence under the law of a country or territory outside Scotland, has been given, or has accepted or is deemed to have accepted, anything corresponding to a warning, offer, order or notice falling within paragraphs (a) to (e) under the law of that country or territory.
- (2) In this Act, references to an “alternative to prosecution” are to be read in accordance with subsection (1).
 - (3) Schedule 3 to this Act (protection for spent alternatives to prosecution: Scotland) has effect.”.
- (3) After section 9A (unauthorised disclosure of spent cautions), insert—

“9B Unauthorised disclosure of spent alternatives to prosecution: Scotland

- (1) In this section—
 - (a) “official record” means a record that—
 - (i) contains information about persons given an alternative to prosecution in respect of an offence, and
 - (ii) is kept for the purposes of its functions by a court, police force, Government department, part of the Scottish Administration or other local or public authority in Scotland,
 - (b) “relevant information” means information imputing that a named or otherwise identifiable living person has committed, been charged with, prosecuted for or given an alternative to prosecution in respect of an offence which is the subject of an alternative to prosecution which has become spent,
 - (c) “subject of the information”, in relation to relevant information, means the named or otherwise identifiable living person to whom the information relates.
- (2) Subsection (3) applies to a person who, in the course of the person’s official duties (anywhere in the United Kingdom), has or has had custody of or access to an official record or the information contained in an official record.
- (3) The person commits an offence if the person—
 - (a) obtains relevant information in the course of the person’s official duties,
 - (b) knows or has reasonable cause to suspect that the information is relevant information, and
 - (c) discloses the information to another person otherwise than in the course of the person’s official duties.
- (4) Subsection (3) is subject to the terms of an order under subsection (6).
- (5) In proceedings for an offence under subsection (3), it is a defence for the accused to show that the disclosure was made—

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- (a) to the subject of the information or to a person whom the accused reasonably believed to be the subject of the information, or
 - (b) to another person at the express request of the subject of the information or of a person whom the accused reasonably believed to be the subject of the information.
- (6) The Scottish Ministers may by order provide for the disclosure of relevant information derived from an official record to be excepted from the provisions of subsection (3) in cases or classes of cases specified in the order.
 - (7) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
 - (8) A person commits an offence if the person obtains relevant information from an official record by means of fraud, dishonesty or bribery.
 - (9) A person guilty of an offence under subsection (8) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding 6 months, or to both.”.
- (4) After Schedule 2 (protection for spent convictions) insert—

“SCHEDULE 3

PROTECTION FOR SPENT ALTERNATIVES TO PROSECUTION: SCOTLAND

Preliminary

- 1 (1) For the purposes of this Act, an alternative to prosecution given to any person (whether before or after the commencement of this Schedule) becomes spent—
- (a) in the case of—
 - (i) a warning referred to in paragraph (a) of subsection (1) of section 8B, or
 - (ii) a fixed penalty notice referred to in paragraph (d) of that subsection,at the time the warning or notice is given,
 - (b) in any other case, at the end of the relevant period.
- (2) The relevant period in relation to an alternative to prosecution is the period of 3 months beginning on the day on which the alternative to prosecution is given.
 - (3) Sub-paragraph (1)(a) is subject to sub-paragraph (5).
 - (4) Sub-paragraph (2) is subject to sub-paragraph (6).
 - (5) If a person who is given a fixed penalty notice referred to in section 8B(1)(d) in respect of an offence is subsequently prosecuted and convicted of the offence, the notice—
 - (a) becomes spent at the end of the rehabilitation period for the offence, and
 - (b) is to be treated as not having become spent in relation to any period before the end of that rehabilitation period.
 - (6) If a person who is given an alternative to prosecution (other than one to which sub-paragraph (1)(a) applies) in respect of an offence is subsequently prosecuted and convicted of the offence—

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- (a) the relevant period in relation to the alternative to prosecution ends at the same time as the rehabilitation period for the offence ends, and
 - (b) if the conviction occurs after the end of the period referred to sub-paragraph (2), the alternative to prosecution is to be treated as not having become spent in relation to any period before the end of the rehabilitation period for the offence.
- 2 (1) In this Schedule, “ancillary circumstances”, in relation to an alternative to prosecution, means any circumstances of the following—
- (a) the offence in respect of which the alternative to prosecution is given or the conduct constituting the offence,
 - (b) any process preliminary to the alternative to prosecution being given (including consideration by any person of how to deal with the offence and the procedure for giving the alternative to prosecution),
 - (c) any proceedings for the offence which took place before the alternative to prosecution was given (including anything that happens after that time for the purpose of bringing the proceedings to an end),
 - (d) any judicial review proceedings relating to the alternative to prosecution,
 - (e) in the case of an offer referred to in paragraph (e) of subsection (1) of section 8B, anything done or undergone in pursuance of the terms of the offer.
- (2) Where an alternative to prosecution is given in respect of two or more offences, references in sub-paragraph (1) to the offence in respect of which the alternative to prosecution is given includes a reference to each of the offences.
- (3) In this Schedule, “proceedings before a judicial authority” has the same meaning as in section 4.

Protection for spent alternatives to prosecution and ancillary circumstances

- 3 (1) A person who is given an alternative to prosecution in respect of an offence is, from the time the alternative to prosecution becomes spent, to be treated for all purposes in law as a person who has not committed, been charged with or prosecuted for, or been given an alternative to prosecution in respect of, the offence.
- (2) Despite any enactment or rule of law to the contrary—
- (a) where an alternative to prosecution given to a person in respect of an offence has become spent, evidence is not admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in Scotland to prove that the person has committed, been charged with or prosecuted for, or been given an alternative to prosecution in respect of, the offence,
 - (b) a person must not, in any such proceedings, be asked any question relating to the person’s past which cannot be answered without acknowledging or referring to an alternative to prosecution that has become spent or any ancillary circumstances, and
 - (c) if a person is asked such a question in any such proceedings, the person is not required to answer it.
- (3) Sub-paragraphs (1) and (2) do not apply in relation to any proceedings—

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- (a) for the offence in respect of which the alternative to prosecution was given, and
 - (b) which are not part of the ancillary circumstances.
- 4 (1) This paragraph applies where a person (“A”) is asked a question, otherwise than in proceedings before a judicial authority, seeking information about—
 - (a) A’s or another person’s previous conduct or circumstances,
 - (b) offences previously committed by A or the other person, or
 - (c) alternatives to prosecution previously given to A or the other person.
- (2) The question is to be treated as not relating to alternatives to prosecution that have become spent or to any ancillary circumstances and may be answered accordingly.
- (3) A is not to be subjected to any liability or otherwise prejudiced in law because of a failure to acknowledge or disclose an alternative to prosecution that has become spent or any ancillary circumstances in answering the question.
- 5 (1) An obligation imposed on a person (“A”) by a rule of law or by the provisions of an agreement or arrangement to disclose any matter to another person does not extend to requiring A to disclose an alternative to prosecution (whether one given to A or another person) that has become spent or any ancillary circumstances.
- (2) An alternative to prosecution that has become spent or any ancillary circumstances, or any failure to disclose an alternative to prosecution that has become spent or any ancillary circumstances, is not a ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing the person in any way in any occupation or employment.
- 6 The Scottish Ministers may by order—
 - (a) exclude or modify the application of any of paragraphs (a) to (c) of paragraph 3(2) in relation to questions put in such circumstances as may be specified in the order,
 - (b) provide for exceptions from any of the provisions of paragraphs 4 and 5 in such cases or classes of case, or in relation to alternatives to prosecution of such descriptions, as may be specified in the order.
- 7 Paragraphs 3 to 5 do not affect—
 - (a) the operation of an alternative to prosecution, or
 - (b) the operation of an enactment by virtue of which, because of an alternative to prosecution, a person is subject to a disqualification, disability, prohibition or other restriction or effect for a period extending beyond the time at which the alternative to prosecution becomes spent.
- 8 (1) Section 7(2), (3) and (4) apply for the purpose of this Schedule as follows.
- (2) Subsection (2), apart from paragraphs (b) and (d), applies to the determination of any issue, and the admission or requirement of evidence, relating to alternatives to prosecution previously given to a person and to ancillary circumstances as it applies to matters relating to a person’s previous convictions and circumstances ancillary thereto.

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- (3) Subsection (3) applies to evidence of alternatives to prosecution previously given to a person and ancillary circumstances as it applies to evidence of a person's previous convictions and the circumstances ancillary thereto.
- (4) For that purpose, subsection (3) has effect as if—
 - (a) a reference to subsection (2) or (4) of section 7 were a reference to that subsection as applied by this paragraph, and
 - (b) the words “or proceedings to which section 8 below applies” were omitted.
- (5) Subsection (4) applies for the purpose of excluding the application of paragraph 3.
- (6) For that purpose, subsection (4) has effect as if the words “(other than proceedings to which section 8 below applies)” were omitted.
- (7) References in the provisions applied by this paragraph to section 4(1) are to be read as references to paragraph 3.”>

Kenny MacAskill

452 In schedule 5, page 152, line 12, leave out from <In> to <1974> and insert—

- <() The Rehabilitation of Offenders Act 1974 is amended as follows.
- () In section 1>

Kenny MacAskill

453 In schedule 5, page 152, line 15, at end insert—

- <() In section 6(6)(bb) (convictions in service disciplinary proceedings), for “the Schedule” substitute “Schedule 1”.
- () The Schedule (service disciplinary proceedings) is renumbered as Schedule 1.>

Medical services in prisons

Kenny MacAskill

448 After section 79, insert—

<Medical services in prisons

Medical services in prisons

- (1) For section 3A of the Prisons (Scotland) Act 1989 (c.45) (medical services in prisons) substitute—

“3A Medical officers for prisons

- (1) The Scottish Ministers must designate one or more medical officers for each prison.
- (2) A person may be designated as a medical officer for a prison only if the person is a registered medical practitioner performing primary medical services for prisoners at the prison under the National Health Service (Scotland) Act 1978 (c.29).

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- (3) A medical officer has the functions that are conferred on a medical officer for a prison by or under this Act or any other enactment.
 - (4) A medical officer is not an officer of the prison for the purposes of this Act.
 - (5) Rules under section 39 of this Act may provide for the governor of a prison to authorise the carrying out by officers of the prison of a search of any person who is in, or is seeking to enter, the prison for the purpose of providing medical services for any prisoner at the prison.
 - (6) Nothing in rules made by virtue of subsection (5) allows the governor to authorise an officer of a prison to require a person to remove any of the person's clothing other than an outer coat, jacket, headgear, gloves and footwear.”.
- (2) In section 41D of that Act (unlawful disclosure of information by medical officers), for subsection (1) substitute—
- “(1) This section applies to—
- (a) a medical officer for a prison, and
 - (b) any person acting under the supervision of such a medical officer.”.

(3) In section 107 of the Criminal Justice and Public Order Act 1994 (c.33) (officers of contracted out prisons), for subsections (6) to (8) substitute—

“(6) The director must designate one or more medical officers for the prison.

(7) A person may be designated as a medical officer for the prison only if the person is a registered medical practitioner performing primary medical services for prisoners at the prison under the National Health Service (Scotland) Act 1978 (c.29).”.

(4) In section 110 of that Act (consequential modifications of the 1989 Act etc.)—

 - (a) in each of subsections (3) and (4), for “3A(6)” substitute “3A(5) and (6)”,
 - (b) subsection (4A) is repealed, and
 - (c) in subsection (6), for “3A(1) to (5) (medical services)” substitute “3A(1) and (2) (medical officers)”.

(5) In section 111(3) of that Act (intervention by the Scottish Ministers), in paragraph (c), after “prison” insert “and the medical officer or officers for the prison”.>

Assistance for victim support

Angela Constance

- 413** In section 80, page 100, line 29, after <victims> insert <(including children and young people)>

