

# Criminal Justice and Licensing (Scotland) Bill

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## 5th Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 3	Schedule 1
Sections 4 to 18	Schedule 2
Sections 19 to 66	Schedule 3
Sections 67 to 139	Schedule 4
Sections 140 to 145	Schedule 5
Sections 146 to 148	Long Title

Amendments marked \* are new (including manuscript amendments) or have been altered.

### Section 38

#### 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.>

### **Section 39**

#### **Kenny MacAskill**

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

#### **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.>

### **Section 40**

#### **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

### **After section 40**

#### **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;
  - (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;”.>

## Section 41

### **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.>

#### **After section 41**

##### **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.>

#### **After section 43**

##### **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.>

#### **Section 44**

##### **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)”,>

**After section 46**

**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
  - (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.”.>

**Section 47**

**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.>

**After section 51**

**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—
- “(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.>

## **Section 52**

### **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.”.>

### **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.”.>

## **After section 52**

### **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.>

**After schedule 2**

**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).
  - (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”,

(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;”.

#### *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,”

(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.”.>

## **Section 54**

### **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.>

**Section 55**

**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.

- (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>

**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.>

**Section 57**

**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>

**Section 58**

**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—

<( ) 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—



“(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.>

**After section 58**

**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—
  - (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
  - (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
  - (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,
  - (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.”.>

## Section 59

### 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.>

**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>

**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”>

**After section 59**

**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);”.>

**Section 60**

**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**

- 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**

- 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>

**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”).
  - (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**

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.>

**Section 61**

**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>

### **Before section 62**

## **Kenny MacAskill**

- 430** Before section 62, insert—

### **<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.>

### **Section 62**

## **Robert Brown**

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

### **After section 64**

## **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.”.>

## Section 66

### 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>

### 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

## Schedule 3

### 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>

## After section 67

### 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.
- (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.>

## Before section 68

### 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—
    - (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.>

### **Section 68**

#### **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.”>

### **After section 68**

#### **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—
- (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”.>

## Section 69

### David McLetchie

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

## Section 70

### 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).>

## After section 71

### 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),
  - (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.>

## Section 72

### 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**

143 In section 72, page 95, line 3, at end insert—

<( ) an offence under section (*Slavery, servitude and forced or compulsory labour*) (slavery, servitude and forced or compulsory labour) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 00).>

**Kenny MacAskill**

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

**Section 74**

**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).”.>

## After section 74

### 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.
    - (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.”.>

## After section 75

### 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;”.>

## Section 77

### 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

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

## Section 78

### 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>

**Kenny MacAskill**

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

**Section 79**

**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>

**After section 79**

**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,
    - (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—
    - (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—
    - (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—
- (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.
  - (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**

**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).
  - (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”.>

## Section 80

### Angela Constance

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

## Section 85

### Kenny MacAskill

- 696 In section 85, page 104, line 7, leave out <an accused> and insert <criminal proceedings relating to a person>

### Kenny MacAskill

- 553 In section 85, page 104, line 7, leave out <(other than precognitions and victim statements)>

### Kenny MacAskill

- 697 In section 85, page 104, line 9, leave out <case against the accused> and insert <proceedings>

### Kenny MacAskill

- 555 In section 85, page 104, line 10, leave out subsection (2)

### Kenny MacAskill

- 556\* In section 85, page 104, line 20, at end insert—

<(3) In sections (*Duty to disclose after conclusion of proceedings at first instance*) to (*Review of ruling under section (Application by appellant for ruling on disclosure)*) “information”, in relation to appellate proceedings, includes material of any kind given to or obtained by the prosecutor in connection with the appellate proceedings or the earlier proceedings.

(4) In subsection (3)—

“appellate proceedings” has the meaning given by section (*Sections (Duty to disclose after conclusion of proceedings at first instance) to (Review of ruling under section (Application by appellant for ruling on disclosure))*): *interpretation*), “earlier proceedings” has the meaning given in section (*Duty to disclose after conclusion of proceedings at first instance*)(5).>

## Section 86

### Kenny MacAskill

- 557 Leave out section 86 and insert—

#### <Provision of information to prosecutor: solemn cases

(1) This section applies where in a prosecution—

(a) an accused appears for the first time on petition, or

- (b) an accused appears for the first time on indictment (not having appeared on petition in relation to the same matter).
- (2) As soon as practicable after the appearance, the investigating agency must provide the prosecutor with details of all the information that may be relevant to the case for or against the accused that the agency is aware of that was obtained (whether by the agency or otherwise) in the course of investigating the matter to which the appearance relates.
- (3) As soon as practicable after being required to do so by the prosecutor, the investigating agency must provide the prosecutor with any of that information that the prosecutor specifies in the requirement.
- (4) In this section, “investigating agency” means—
  - (a) a police force, or
  - (b) such other person who—
    - (i) engages (to any extent) in the investigation of crime or sudden deaths, and
    - (ii) submits reports relating to those investigations to the procurator fiscal,
 as the Scottish Ministers may prescribe by regulations.>

## Section 87

### **Kenny MacAskill**

- 558** In section 87, page 105, line 24, leave out <86(3)> and insert <(Provision of information to prosecutor: solemn cases)(2)>

### **Kenny MacAskill**

- 559** In section 87, page 105, line 30, leave out subsection (2) and insert—
- <( ) As soon as practicable after becoming aware of the further information, the investigating agency must provide the prosecutor with details of it.
  - ( ) As soon as practicable after being required to do so by the prosecutor, the investigating agency must provide the prosecutor with any of that further information that the prosecutor specifies in the requirement.>

### **Kenny MacAskill**

- 560** In section 87, page 105, line 33, leave out from beginning to <“the> in line 34

### **Kenny MacAskill**

- 561** In section 87, page 105, line 35, leave out <86(3)> and insert <(Provision of information to prosecutor: solemn cases)(2)>

### **Kenny MacAskill**

- 562** In section 87, page 106, line 1, leave out <this section> and insert <subsection (3)>

## Section 88

### Kenny MacAskill

563 Leave out section 88

## After section 88

### Kenny MacAskill

564 After section 88, insert—

#### <Provision of information to prosecutor: summary cases

- (1) This section applies where a plea of not guilty is recorded against an accused charged on summary complaint.
- (2) As soon as practicable after the recording of the plea, the investigating agency must inform the prosecutor of the existence of all the information that may be relevant to the case for or against the accused that the agency is aware of that was obtained (whether by the agency or otherwise) in the course of investigating the matter to which the plea relates.
- (3) As soon as practicable after being required to do so by the prosecutor, the investigating agency must provide the prosecutor with any of that information that the prosecutor specifies in the requirement.>

### Kenny MacAskill

565 After section 88, insert—

#### <Continuing duty of investigating agency: summary cases

- (1) This section applies where—
  - (a) an investigating agency has complied with section (*Provision of information to prosecutor: summary cases*)(2) in relation to an accused, and
  - (b) during the relevant period the investigating agency becomes aware that further information that may be relevant to the case for or against the accused has been obtained (whether by the agency or otherwise) in the course of investigating the accused's case.
- (2) As soon as practicable after becoming aware of the further information, the investigating agency must inform the prosecutor of the existence of the information.
- (3) As soon as practicable after being required to do so by the prosecutor, the investigating agency must provide the prosecutor with any of that further information that the prosecutor specifies in the requirement.
- (4) In this section, “relevant period” means the period—
  - (a) beginning with the investigating agency's compliance with section (*Provision of information to prosecutor: summary cases*)(2) in relation to the accused, and
  - (b) ending with the agency's receiving notice from the prosecutor of the conclusion of the proceedings against the accused.
- (5) For the purposes of subsection (4), proceedings against an accused are to be taken to be concluded if—

- (a) a plea of guilty is recorded against the accused,
- (b) the accused is acquitted,
- (c) the proceedings against the accused are deserted *simpliciter*,
- (d) the accused is convicted and does not appeal against the conviction before the expiry of the time allowed for such an appeal,
- (e) the proceedings are deserted *pro loco et tempore* for any reason and no further trial diet is appointed, or
- (f) the complaint falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation.>

## Section 89

### **Kenny MacAskill**

**566** In section 89, page 106, line 31, after <where> insert <in a prosecution>

### **Kenny MacAskill**

**567** In section 89, page 106, line 33, after <indictment> insert <(not having appeared on petition in relation to the same matter)>

### **Bill Aitken**

**147** In section 89, page 106, line 37, leave out <review all the> and insert <disclose to the accused all>

### **Bill Aitken**

**148** In section 89, page 106, line 38, leave out from <and> to end of line 14 on page 107

### **Kenny MacAskill**

**568** In section 89, page 107, line 1, leave out from beginning to <applies> in line 2 and insert—  
 <(b) disclose to the accused the information to which subsection (3) applies.  
 (3) This subsection applies to information>

### **Kenny MacAskill**

**569** In section 89, page 107, line 3, leave out <prosecution case> and insert <evidence that is likely to be led by the prosecutor in the proceedings against the accused>

### **Kenny MacAskill**

**570** In section 89, page 107, line 5, leave out <prosecution case> and insert <evidence to be led by the prosecutor in the proceedings against the accused>

### **Kenny MacAskill**

**571** In section 89, page 107, line 6, leave out subsections (4) to (6)

**Kenny MacAskill**

572 In section 89, page 107, line 15, leave out <(5)> and insert <(2)(b)>

**Bill Aitken**

149 In section 89, page 107, line 15, leave out <(5)> and insert <(2)>

**After section 89**

**Kenny MacAskill**

573 After section 89, insert—

**<Disclosure of other information: solemn cases**

- (1) This section applies where by virtue of subsection (2)(b) of section 89 the prosecutor is required to disclose information to an accused who falls within paragraph (a) or (b) of subsection (1) of that section.
- (2) As soon as practicable after complying with the requirement, the prosecutor must disclose to the accused details of any information which the prosecutor is not required to disclose under section 89(2)(b) but which may be relevant to the case for or against the accused.
- (3) The prosecutor need not disclose under subsection (2) details of sensitive information.
- (4) In subsection (3), “sensitive”, in relation to an item of information, means that if it were to be disclosed there would be a risk of—
  - (a) causing serious injury, or death, to any person,
  - (b) obstructing or preventing the prevention, detection, investigation or prosecution of crime, or
  - (c) causing serious prejudice to the public interest.>

**Section 90**

**Kenny MacAskill**

574 In section 90, page 107, line 19, leave out <subsection (5) or (6) of section 89> and insert <section 89(2)(b)>

**Bill Aitken**

150 In section 90, page 107, line 19, leave out <(5) or (6)> and insert <(2)>

**Kenny MacAskill**

575 In section 90, page 107, line 24, leave out from beginning to <“the> in line 27 and insert <and

- (b) disclose to the accused any information to which section 89(3) applies.
- (2A) As soon as practicable after complying with subsection (2), the prosecutor must disclose to the accused details of any other information that may be relevant to the case for or against the accused of which the prosecutor is aware.
- (2B) The prosecutor need not disclose under subsection (2A) details of sensitive information.

(2C) In subsection (2)>

**Bill Aitken**

- 151 In section 90, page 107, leave out lines 24 to 26 and insert <and  
(b) disclose to the accused any such information not already disclosed under section  
89(2).>

**Kenny MacAskill**

- 576 In section 90, page 107, line 28, leave out <subsection (5) or (6) of section 89> and insert  
<section 89(2)(b)>

**Bill Aitken**

- 152 In section 90, page 107, line 28, leave out <(5) or (6)> and insert <(2)>

**Kenny MacAskill**

- 577 In section 90, page 107, line 30, at end insert—  
<“sensitive” has the meaning given by section (*Disclosure of other information:  
solemn cases*)(4).>

**Kenny MacAskill**

- 578 In section 90, page 107, line 31, leave out <this section> and insert <subsection (2C)>

**Section 91**

**Kenny MacAskill**

- 579 In section 91, page 108, line 5, leave out <under section 89(5) or 90(2)> and insert <by virtue of  
this Part>

**Bill Aitken**

- 153 In section 91, page 108, line 5, leave out <89(5) or 90(2)> and insert <89(2) or 90(2)(b)>

**Kenny MacAskill**

- 580 Move section 91 to after section 99

**Section 92**

**Kenny MacAskill**

- 581 In section 92, page 108, line 10, leave out from <section> to <accused> in line 11 and insert <this  
Part the prosecutor is required to disclose>



**Bill Aitken**

- 154 In section 92, page 108, line 10, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2) or 90(2)(b)>

**Kenny MacAskill**

- 582 Move section 92 to after section 96

**Section 93**

**Bill Aitken**

- 155 In section 93, page 108, line 20, leave out <(5)> and insert <(2)>

**Kenny MacAskill**

- 583 Leave out section 93

**Section 94**

**Kenny MacAskill**

- 584 In section 94, page 108, line 30, leave out from beginning to <pre-trial> in line 31 and insert—  
<(1) This section applies where the accused lodges a defence statement under section 70A of the 1995 Act.  
(1A) As soon as practicable after the prosecutor receives a copy of the defence>

**Kenny MacAskill**

- 585 In section 94, page 108, leave out lines 34 to 36 and insert <and  
(b) disclose to the accused any information to which section 89(3) applies.>

**Kenny MacAskill**

- 586 In section 94, page 109, line 8, leave out lines 8 to 13 and insert—  
<(4) At least 7 days before the trial diet the accused must—  
(a) where there has been no material change in circumstances in relation to the accused's defence since the last defence statement was lodged, lodge a statement stating that fact,  
(b) where there has been a material change in circumstances in relation to the accused's defence since the last defence statement was lodged, lodge a defence statement.>

**Kenny MacAskill**

- 587 In section 94, page 109, line 13, at end insert—  
<(4A) If after lodging a statement under subsection (2), (3) or (4) there is a material change in circumstances in relation to the accused's defence, the accused must lodge a defence statement.

- (4B) Where subsection (4A) requires a defence statement to be lodged, it must be lodged before the trial diet begins unless on cause shown the court allows it to be lodged during the trial diet.>

**Kenny MacAskill**

- 588 In section 94, page 109, line 14, after <statement> insert—  
<( )>

**Kenny MacAskill**

- 589 In section 94, page 109, line 14, leave out <other>

**Kenny MacAskill**

- 590 In section 94, page 109, line 15, at end insert <or  
( ) during the trial diet if the court on cause shown allows it.>

**Kenny MacAskill**

- 591 In section 94, page 109, line 15, at end insert—  
<( ) As soon as practicable after lodging a defence statement or a statement under subsection (4)(a), the accused must send a copy of the statement to the prosecutor and any co-accused.>

**Kenny MacAskill**

- 592 In section 94, page 109, line 20, at end insert—  
<( ) particulars of the matters of fact on which the accused intends to rely for the purposes of the accused’s defence,>

**Kenny MacAskill**

- 593 In section 94, page 109, line 21, leave out <in relation to disclosure>

**Kenny MacAskill**

- 594 In section 94, page 109, line 27, at end insert—  
<( ) In section 78 of the 1995 Act (special defences, incrimination, notice of witnesses etc.), after subsection (1) insert—  
“(1A) Subsection (1) does not apply where—  
(a) the accused lodges a defence statement under section 70A, and  
(b) the accused’s defence consists of or includes a special defence.”.>

**Bill Aitken**

**Supported by: Robert Brown**

- 156 Leave out section 94

## Section 95

### Kenny MacAskill

- 595 In section 95, page 109, line 32, leave out <prosecutor receives from the accused> and insert <accused lodges>

### Kenny MacAskill

- 596 In section 95, page 109, line 38, at end insert—  
<( ) particulars of the matters of fact on which the accused intends to rely for the purposes of the accused’s defence,>

### Kenny MacAskill

- 597 In section 95, page 109, line 39, leave out <in relation to disclosure>

### Kenny MacAskill

- 598 In section 95, page 110, line 4, at end insert—  
<( ) As soon as practicable after lodging a defence statement, the accused must send a copy of the statement to the prosecutor and any co-accused.>

### Kenny MacAskill

- 599 In section 95, page 110, line 5, after <receiving> insert <a copy of>

### Kenny MacAskill

- 600 In section 95, page 110, leave out lines 8 to 10 and insert <and  
(b) disclose to the accused any information to which section 89(3) applies.>

### Kenny MacAskill

- 601 In section 95, page 110, line 24, at end insert—  
<( ) In section 149B of the 1995 Act (notice of defences), after subsection (2) insert—  
“(2A) Subsection (1) does not apply where—  
(a) the accused lodges a defence statement under section 95 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 00),  
(b) the statement is lodged—  
(i) where an intermediate diet is to be held, at or before the diet, or  
(ii) where such a diet is not to be held, no later than 10 clear days before the trial diet, and  
(c) the accused’s defence consists of or includes a defence to which that subsection applies.”.>

**Bill Aitken**  
**Supported by: Robert Brown**

157 Leave out section 95

**After section 95**

**Kenny MacAskill**

602 After section 95, insert—

**<Change in circumstances following lodging of defence statement: summary proceedings**

- (1) This section applies where the accused lodges a defence statement under section 95 at least 14 days before the trial diet.
- (2) At least 7 days before the trial diet the accused must—
  - (a) where there has been no material change in circumstances in relation to the accused's defence since the defence statement was lodged, lodge a statement stating that fact,
  - (b) where there has been a material change in circumstances in relation to the accused's defence since the defence statement was lodged, lodge a defence statement.
- (3) If after lodging a statement under subsection (2) there is a material change in circumstances in relation to the accused's defence, the accused must lodge a defence statement.
- (4) Where subsection (3) requires a defence statement to be lodged, it must be lodged before the trial diet begins unless on cause shown the court allows it to be lodged during the trial diet.
- (5) As soon as practicable after lodging a statement under subsection (2)(a) or a defence statement under subsection (2)(b) or (3), the accused must send a copy of the statement concerned to the prosecutor and any co-accused.
- (6) As soon as practicable after receiving a copy of a defence statement lodged under subsection (2)(b) or (3) the prosecutor must—
  - (a) review all the information that may be relevant to the case for or against the accused of which the prosecutor is aware, and
  - (b) disclose to the accused any information to which section 89(3) applies.
- (7) In this section, "defence statement" is to be construed in accordance with section 95(2).>

**Kenny MacAskill**

603 After section 95, insert—

*<Court rulings on disclosure*

**Application by accused for ruling on disclosure**

- (1) This section applies where the accused—

- (a) has lodged a defence statement under section 70A of the 1995 Act or section 95 or (*Change in circumstances following lodging of defence statement: summary proceedings*) of this Act, and
  - (b) considers that the prosecutor has failed, in responding to the statement, to disclose to the accused an item of information to which section 89(3) applies (the “information in question”).
- (2) The accused may apply to the court for a ruling on whether section 89(3) applies to the information in question.
- (3) An application under subsection (2) is to be made in writing and must set out—
- (a) where the accused is charged with more than one offence, the charge or charges to which the application relates,
  - (b) a description of the information in question, and
  - (c) the accused’s grounds for considering that section 89(3) applies to the information in question.
- (4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.
- (5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—
- (a) comply with subsection (3), or
  - (b) otherwise disclose any reasonable grounds for considering that section 89(3) applies to the information in question.
- (6) At a hearing appointed under subsection (4), the court must give the prosecutor and the accused an opportunity to be heard before determining the application.
- (7) On determining the application, the court must—
- (a) make a ruling on whether section 89(3) applies to the information in question or to any part of the information in question, and
  - (b) where the accused is charged with more than one offence, specify the charge or charges to which the ruling relates.
- (8) Except where it is impracticable to do so, the application is to be assigned to the justice of the peace, sheriff or judge who is presiding, or is to preside, at the accused’s trial.>

**Kenny MacAskill**

**604** After section 95, insert—

**<Review of ruling under section (*Application by accused for ruling on disclosure*)**

- (1) This section applies where—
- (a) the court has made a ruling under section (*Application by accused for ruling on disclosure*) that section 89(3) does not apply to an item of information (the “information in question”), and
  - (b) during the relevant period—
    - (i) the accused becomes aware of information (the “secondary information”) that was unavailable to the court at the time it made its ruling, and

- (ii) the accused considers that, had the secondary information been available to the court at that time, it would have made a ruling that section 89(3) does apply to the information in question.
- (2) The accused may apply to the court which made the ruling for a review of the ruling.
- (3) An application under subsection (2) is to be made in writing and must set out—
  - (a) where the accused is charged with more than one offence, the charge or charges to which the application relates,
  - (b) a description of the information in question and the secondary information, and
  - (c) the accused’s grounds for considering that section 89(3) applies to the information in question.
- (4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.
- (5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—
  - (a) comply with subsection (3), or
  - (b) otherwise disclose any reasonable grounds for considering that section 89(3) applies to the information in question.
- (6) At a hearing appointed under subsection (4), the court must give the prosecutor and the accused an opportunity to be heard before determining the application.
- (7) On determining the application, the court may—
  - (a) affirm the ruling being reviewed, or
  - (b) recall that ruling and—
    - (i) make a ruling that section 89(3) applies to the information in question or to any part of the information in question, and
    - (ii) where the accused is charged with more than one offence, specify the charge or charges to which the ruling relates.
- (8) Except where it is impracticable to do so, the application is to be assigned to the justice of the peace, sheriff or judge who dealt with the application for the ruling that is being reviewed.
- (9) Nothing in this section affects any right of appeal in relation to the ruling being reviewed.
- (10) In this section, “relevant period”, in relation to an accused, means the period—
  - (a) beginning with the making of the ruling being reviewed, and
  - (b) ending with the conclusion of proceedings against the accused.
- (11) For the purposes of subsection (10), proceedings against the accused are taken to be concluded if—
  - (a) a plea of guilty is recorded against the accused,
  - (b) the accused is acquitted,
  - (c) the proceedings against the accused are deserted *simpliciter*,
  - (d) the accused is convicted and does not appeal against the conviction before expiry of the time allowed for such an appeal,

- (e) the proceedings are deserted *pro loco et tempore* for any reason and no further trial diet is appointed, or
- (f) the indictment or complaint falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation.>

**Kenny MacAskill**

**605** After section 95, insert—

**<Appeals against rulings under section (*Application by accused for ruling on disclosure*)**

- (1) The prosecutor or the accused may, within the period of 7 days beginning with the day on which a ruling is made under section (*Application by accused for ruling on disclosure*), appeal to the High Court against the ruling.
- (2) Where an appeal is brought under subsection (1), the court of first instance or the High Court may—
  - (a) postpone any trial diet that has been appointed for such period as it thinks appropriate,
  - (b) adjourn or further adjourn any hearing for such period as it thinks appropriate,
  - (c) direct that any period of postponement or adjournment under paragraph (a) or (b) or any part of such period is not to count toward any time limit applying in the case.
- (3) In disposing of an appeal under subsection (1), the High Court may—
  - (a) affirm the ruling, or
  - (b) remit the case back to the court of first instance with such directions as the High Court thinks appropriate.
- (4) This section does not affect any other right of appeal which any party may have in relation to a ruling under section (*Application by accused for ruling on disclosure*).>

**Section 96**

**Kenny MacAskill**

**606** In section 96, page 110, line 28, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2)(b), 90(2)(b), 94(1A)(b) or 95(3)(b)>

**Bill Aitken**

**158** In section 96, page 110, line 28, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2) or 90(2)(b)>

**Kenny MacAskill**

**607** In section 96, page 110, line 32, leave out from <is> to end of line and insert <but for that plea would have been likely to have formed part of the evidence to be led by the prosecutor in the proceedings against the accused.>

## After section 96

### Kenny MacAskill

608\* After section 96, insert—

*<Disclosure after conclusion of proceedings at first instance*

#### **Sections (*Duty to disclose after conclusion of proceedings at first instance*) to (*Review of ruling under section (Application by appellant for ruling on disclosure)*): interpretation**

In sections (*Duty to disclose after conclusion of proceedings at first instance*) to (*Review of ruling under section (Application by appellant for ruling on disclosure)*)—

“appellant”, in relation to appellate proceedings, includes a person authorised by an order under section 303A(4) of the 1995 Act to institute or continue the proceedings,

“appellate proceedings” means—

- (a) an appeal under section 106(1)(a) or (f) of the 1995 Act which brings under review an alleged miscarriage of justice,
- (b) an appeal under paragraph (b), (ba), (bb), (c), (d), (db) or (dc) of subsection (1) of section 106 of the 1995 Act which brings under review in accordance with subsection (3)(a) of that section an alleged miscarriage of justice,
- (c) an appeal under section 175(2)(a) or (d) of the 1995 Act which brings under review an alleged miscarriage of justice,
- (d) an appeal under paragraph (b), (c) or (cb) of subsection (2) of section 175 of the 1995 Act which brings under review an alleged miscarriage of justice which is based on the type of miscarriage described in subsection (5) of that section,
- (e) an appeal to the Supreme Court against a determination by the High Court of Justiciary of a devolution issue,
- (f) an appeal against conviction by bill of suspension under section 191(1) of the 1995 Act,
- (g) an appeal against conviction by bill of advocacy,
- (h) a petition to the *nobile officium* in respect of a matter arising out of criminal proceedings which brings under review an alleged miscarriage of justice which is based on the existence and significance of new evidence,
- (i) an appeal under section 62(1)(b) of the 1995 Act against a finding under section 55(2) of that Act,
- (j) the referral to the High Court of Justiciary under section 194B of the 1995 Act of—
  - (i) a conviction, or
  - (ii) a finding under section 55(2) of that Act.>

### Kenny MacAskill

609\* After section 96, insert—



**<Duty to disclose after conclusion of proceedings at first instance**

- (1) This section applies where appellate proceedings are instituted in relation to an appellant.
- (2) As soon as practicable after the relevant act the prosecutor must—
  - (a) review all information of which the prosecutor is aware that relates to the grounds of appeal in the appellate proceedings, and
  - (b) disclose to the appellant any information that falls within subsection (3).
- (3) Information falls within this subsection if it is—
  - (a) information that the prosecutor was required by virtue of section 89(2)(b) or 90(2)(b) to disclose in the earlier proceedings but did not disclose,
  - (b) information to which, during the earlier proceedings, the prosecutor considered paragraph (a) or (b) of section 89(3) did not apply but to which the prosecutor now considers one or both of those paragraphs would apply, or
  - (c) information of which the prosecutor has become aware since the disposal of the earlier proceedings that, had the prosecutor been aware of it during those proceedings, the prosecutor would have been required to disclose by virtue of section 89(2)(b) or 90(2)(b).
- (4) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the appellant.
- (5) In this section—

“earlier proceedings”, in relation to appellate proceedings, means the proceedings to which the appellate proceedings relate,

“relevant act” means—

  - (a) in relation to proceedings of the type mentioned in paragraph (a) or (b) of the relevant definition, the granting under section 107(1)(a) of the 1995 Act of leave to appeal,
  - (b) in relation to proceedings of the type mentioned in paragraph (c) or (d) of the relevant definition, the granting under section 180(1)(a) or, as the case may be, 187(1)(a) of that Act of leave to appeal,
  - (c) in relation to proceedings of the type mentioned in paragraph (e) of the relevant definition, the granting of leave to appeal by the High Court of Justiciary or, as the case may be, the Supreme Court,
  - (d) in relation to proceedings of the type mentioned in paragraph (f) of the relevant definition—
    - (i) if leave to appeal is required, the granting under section 191(2) of that Act of leave to appeal,
    - (ii) if leave to appeal is not required, service on the prosecutor under the relevant rule of a certified copy of the bill of suspension and the interlocutor granting first order for service,
  - (e) in relation to proceedings of the type mentioned in paragraph (g) of the relevant definition, service on the prosecutor under the relevant rule of a certified copy of the bill of advocation and the interlocutor granting first order for service,

- (f) in relation to proceedings of the type mentioned in paragraph (h) of the relevant definition, service on the prosecutor under the relevant rule of a certified copy of the petition and the interlocutor granting first order for service,
- (g) in relation to proceedings of the type mentioned in paragraph (i) of the relevant definition, the lodging of the appeal,
- (h) in relation to proceedings of the type mentioned in paragraph (j) of the relevant definition, the lodging of the grounds of appeal by the person to whom the referral relates,

“relevant definition” means the definition of appellate proceedings in section (*Sections (Duty to disclose after conclusion of proceedings at first instance) to (Review of ruling under section (Application by appellant for ruling on disclosure)): interpretation*),

“relevant rule” means rule 29A.1(3) of the Criminal Procedure Rules 1996 (S.I. 1996/513).>

### **Kenny MacAskill**

**610** After section 96, insert—

#### **<Continuing duty of prosecutor**

- (1) This section applies where the prosecutor has complied with section (*Duty to disclose after conclusion of proceedings at first instance*)(2) in relation to an appellant.
- (2) During the relevant period, the prosecutor must—
  - (a) from time to time review all information of which the prosecutor is aware that relates to the grounds of appeal in the appellate proceedings which relate to the appellant, and
  - (b) disclose to the appellant any information that falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).
- (3) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the appellant.
- (4) In subsection (2), “relevant period” means the period—
  - (a) beginning with the prosecutor’s compliance with section (*Duty to disclose after conclusion of proceedings at first instance*)(2), and
  - (b) ending with the relevant conclusion.
- (5) In subsection (4), “relevant conclusion” means—
  - (a) in relation to proceedings of the type mentioned in paragraph (a) or (b) of the relevant definition—
    - (i) the lodging under section 116(1) of the 1995 Act of a notice of abandonment, or
    - (ii) the disposal of the appeal under section 118 of that Act,
  - (b) in relation to proceedings of the type mentioned in paragraph (c) or (d) of the relevant definition—
    - (i) the disposal of the appeal under section 183(1)(b) to (d) of that Act,

- (ii) the abandonment of the appeal under section 184(1) of that Act,
- (iii) the setting aside of the conviction or sentence or, as the case may be, conviction and sentence under section 188(1) of that Act, or
- (iv) the disposal of the appeal under section 190(1) of that Act,
- (c) in relation to proceedings of the type mentioned in paragraph (e), (f), (g) or (h) of the relevant definition, the disposal or abandonment of the appeal,
- (d) in relation to proceedings of the type mentioned in paragraph (i) of the relevant definition, the disposal of the appeal under section 62(6) of that Act or the abandonment of the appeal,
- (e) in relation to proceedings of the type mentioned in paragraph (j) of the relevant definition—
  - (i) if the referral or finding is being treated as if it were an appeal under Part 8 of that Act, the conclusion mentioned in paragraph (a) above,
  - (ii) if the referral or finding is being treated as if it were an appeal under Part 10 of that Act, the conclusion mentioned in paragraph (b) above or, where the referral or finding proceeds by way of bill of suspension, bill of advocacy or petition to the *nobile officium*, paragraph (c) above.
- (6) In this section, “relevant definition” has the meaning given by section (*Duty to disclose after conclusion of proceedings at first instance*)(5).>

**Kenny MacAskill**

**611** After section 96, insert—

**<Application to prosecutor for further disclosure**

- (1) This section applies where—
  - (a) the prosecutor has complied with section (*Duty to disclose after conclusion of proceedings at first instance*)(2) in relation to an appellant, and
  - (b) the appellant lodges a further disclosure request—
    - (i) during the preliminary period, or
    - (ii) if the court on cause shown allows it, after the preliminary period but before the relevant conclusion.
- (2) A further disclosure request must set out—
  - (a) by reference to the grounds of appeal, the nature of the information that the appellant wishes the prosecutor to disclose, and
  - (b) the reasons why the appellant considers that disclosure by the prosecutor of any such information is necessary.
- (3) As soon as practicable after receiving a copy of the further disclosure request the prosecutor must—
  - (a) review any information of which the prosecutor is aware that relates to the request, and
  - (b) disclose to the appellant any of that information that falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).
- (4) In this section—

“preliminary period”, in relation to the appellate proceedings concerned, means the period beginning with the relevant act and ending with the beginning of the hearing of the appellate proceedings,

“relevant act” has the meaning given by section (*Duty to disclose after conclusion of proceedings at first instance*)(5),

“relevant conclusion” has the meaning given by section (*Continuing duty of prosecutor*)(5).>

### **Kenny MacAskill**

**612** After section 96, insert—

#### **<Further duty of prosecutor: conviction upheld on appeal**

- (1) This section applies where—
  - (a) in an appeal to the High Court of Justiciary, the High Court upholds the conviction of a person, and
  - (b) after the conclusion of the appeal the prosecutor becomes aware of—
    - (i) information that the prosecutor was required by virtue of section 89(2)(b) or 90(2)(b) to disclose in the earlier proceedings but did not disclose, or
    - (ii) information that falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3) which would have related to the grounds of appeal but was not disclosed.
- (2) As soon as practicable after becoming aware of the information the prosecutor must disclose it to the person.
- (3) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the person.
- (4) Nothing in this section requires the prosecutor to carry out a review of information of which the prosecutor is aware.
- (5) In this section, “earlier proceedings” has the meaning given by section (*Duty to disclose after conclusion of proceedings at first instance*)(5).>

### **Kenny MacAskill**

**613** After section 96, insert—

#### **<Further duty of prosecutor: convicted persons**

- (1) This section applies where—
  - (a) a person has been convicted,
  - (b) after conviction the prosecutor becomes aware of information that the prosecutor was required by virtue of section 89(2)(b) or 90(2)(b) to disclose in the earlier proceedings but did not disclose, and
  - (c) section (*Further duty of prosecutor: conviction upheld on appeal*) does not apply.
- (2) As soon as practicable after becoming aware of the information the prosecutor must disclose it to the person.
- (3) If the person institutes appellate proceedings in relation to the conviction, the prosecutor need not comply with the duty imposed by subsection (2) during the appropriate period.

- (4) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the person.
- (5) Nothing in this section requires the prosecutor to carry out a review of information of which the prosecutor is aware.
- (6) In this section—
  - “appropriate period”, in relation to appellate proceedings, means the period beginning with the relevant act and ending with the relevant conclusion,
  - “earlier proceedings” has the meaning given by section (*Duty to disclose after conclusion of proceedings at first instance*)(5),
  - “relevant act” has the meaning given by section (*Duty to disclose after conclusion of proceedings at first instance*)(5),
  - “relevant conclusion” has the meaning given by section (*Continuing duty of prosecutor*)(5).>

**Kenny MacAskill**

**614** After section 96, insert—

**<Further duty of prosecutor: appeal against acquittal**

- (1) This section applies where—
  - (a) the prosecutor appeals against the acquittal of a person, and
  - (b) after lodging the appeal the prosecutor becomes aware of information which relates to the appeal and falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).
- (2) As soon as practicable after becoming aware of the information the prosecutor must disclose it to the person.
- (3) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the person.
- (4) The prosecutor ceases to be subject to the duty imposed by subsection (2) on the disposal of the appeal by the High Court of Justiciary.
- (5) Nothing in this section requires the prosecutor to carry out a review of information of which the prosecutor is aware.>

**Kenny MacAskill**

**615** After section 96, insert—

*<Court rulings on disclosure: appellate proceedings*

**Application by appellant for ruling on disclosure**

- (1) This section applies where the appellant—
  - (a) has made a further disclosure request under section (*Application to prosecutor for further disclosure*), and
  - (b) considers that the prosecutor has failed, in responding to the request, to disclose to the appellant an item of information falling within section (*Duty to disclose after conclusion of proceedings at first instance*)(3) (the “information in question”).

- (2) The appellant may apply to the court for a ruling on whether the information in question falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).
- (3) An application under subsection (2) is to be made in writing and must set out—
  - (a) where the appellant is or was charged with more than one offence, the charge or charges to which the application relates,
  - (b) a description of the information in question, and
  - (c) the appellant’s grounds for considering that the information in question falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).
- (4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.
- (5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—
  - (a) comply with subsection (3), or
  - (b) otherwise disclose any reasonable grounds for considering that the information in question falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).
- (6) At a hearing appointed under subsection (4), the court must give the prosecutor and the appellant an opportunity to be heard before determining the application.
- (7) On determining the application, the court must—
  - (a) make a ruling on whether the information in question, or any part of the information in question, falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3), and
  - (b) where the appellant is or was charged with more than one offence, specify the charge or charges to which the ruling relates.
- (8) In this section, “the court” means the court before which the appellant’s appeal is brought.
- (9) Except where it is impracticable to do so, the application is to be assigned to the judges who are to hear the appellant’s appeal.>

**Kenny MacAskill**

**616** After section 96, insert—

**<Review of ruling under section (*Application by appellant for ruling on disclosure*)**

- (1) This section applies where—
  - (a) the court has made a ruling under section (*Application by appellant for ruling on disclosure*) that an item of information (the “information in question”) does not fall within section (*Duty to disclose after conclusion of proceedings at first instance*)(3), and
  - (b) during the relevant period—
    - (i) the appellant becomes aware of information (“secondary information”) that was unavailable to the court at the time it made its ruling, and

- (ii) the appellant considers that, had the secondary information been available to the court at that time, it would have made a ruling that the information in question does fall within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).
- (2) The appellant may apply to the court which made the ruling for a review of the ruling.
- (3) An application under subsection (2) is to be made in writing and must set out—
  - (a) where the appellant is or was charged with more than one offence, the charge or charges to which the application relates,
  - (b) a description of the information in question and the secondary information, and
  - (c) the appellant’s grounds for considering that the information in question falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).
- (4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.
- (5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—
  - (a) comply with subsection (3), or
  - (b) otherwise disclose any reasonable grounds for considering that the information in question falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).
- (6) At a hearing appointed under subsection (4), the court must give the prosecutor and the appellant an opportunity to be heard before determining the application.
- (7) On determining the application, the court may—
  - (a) affirm the ruling being reviewed, or
  - (b) recall that ruling and—
    - (i) make a ruling that the information in question, or any part of the information in question, falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3), and
    - (ii) where the appellant is or was charged with more than one offence, specify the charge or charges to which the ruling relates.
- (8) Except where it is impracticable to do so, the application is to be assigned to the judges who dealt with the application for the ruling that is being reviewed.
- (9) Nothing in this section affects any right of appeal in relation to the ruling being reviewed.
- (10) In this section, “relevant period”, in relation to an appellant, means the period—
  - (a) beginning with the making of the ruling being reviewed, and
  - (b) ending with the relevant conclusion.
- (11) In subsection (10), “relevant conclusion” has the meaning given by section (*Continuing duty of prosecutor*)(5).>

## Section 97

### Kenny MacAskill

- 617** In section 97, page 110, line 36, leave out <section 89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <this Part>

### Bill Aitken

- 159** In section 97, page 110, line 36, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2) or 90(2)(b)>

### Kenny MacAskill

- 618** In section 97, page 111, line 2, at end insert—
- <(4) Subsection (5) applies if the information is contained in—
    - (a) a precognition,
    - (b) a victim statement,
    - (c) a statement given by a person whom the prosecutor does not intend to call to give evidence in the proceedings, or
    - (d) where the proceedings relating to the accused are summary proceedings, a statement given by a person whom the prosecutor intends to call to give evidence in the proceedings.
  - (5) In complying with the requirement, the prosecutor need not disclose the precognition or, as the case may be, statement.
  - (6) Subsection (7) applies where the proceedings relating to the accused are solemn proceedings and—
    - (a) the information is contained in a statement given by a person whom the prosecutor intends to call to give evidence in the proceedings, or
    - (b) the information is contained in a statement and the prosecutor intends to apply under section 259 of the 1995 Act to have evidence of the statement admitted in the proceedings.
  - (7) In complying with the requirement, the prosecutor must disclose the statement.>

## Section 98

### Kenny MacAskill

- 619** In section 98, page 111, line 5, leave out <section 89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <this Part>

### Bill Aitken

- 160** In section 98, page 111, line 5, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2) or 90(2)(b)>



**Kenny MacAskill**

**620** In section 98, page 111, line 19, at end insert—

<(4A) If despite subsection (2) the accused discloses the information or anything recorded in it other than in accordance with subsection (3), a person to whom information is disclosed must not use or disclose the information or anything recorded in it.

(4B) Subsections (2), (4) and (4A) do not apply in relation to the use or disclosure of information which is in the public domain at the time of the use or disclosure.>

**Kenny MacAskill**

**621** In section 98, page 111, line 22, at end insert—

<( ) a petition to the *nobile officium*,

( ) proceedings in the European Court of Human Rights.>

**Section 100**

**Bill Aitken**

**161** In section 100, page 111, line 36, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2) or 90(2)(b)>

**Kenny MacAskill**

**622** Leave out section 100

**Section 101**

**Kenny MacAskill**

**623** Leave out section 101

**Section 102**

**Kenny MacAskill**

**624** In section 102, page 112, line 26, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2)(b), 90(2)(b), 94(1A)(b), 95(3)(b) or (*Change in circumstances following lodging of defence statement: summary proceedings*)(6)(b)>

**Bill Aitken**

**162** In section 102, page 112, line 26, leave out from <89(5)> to <information> in line 28 and insert <89(2) or 90(2)(b) the prosecutor is required to disclose an item of information to an accused>

**Kenny MacAskill**

**625** In section 102, page 112, line 31, leave out from <serious> to <prejudice> in line 34 and insert <a real risk of substantial harm or damage>

**Kenny MacAskill**

- 626 In section 102, page 112, line 35, leave out from <a> to end of line 7 on page 113 and insert <an order under section 106 (a “section 106 order”).>

**Bill Aitken**

- 163 In section 102, page 113, line 5, leave out from <89(5)> to end of line 6 and insert <89(2) or, as the case may be, 90(2)(b)>

**Section 103**

**Kenny MacAskill**

- 627 In section 103, page 113, line 10, leave out <non-disclosure> and insert <section 106>

**Kenny MacAskill**

- 628 In section 103, page 113, line 11, leave out <non-disclosure> and insert <section 106>

**Kenny MacAskill**

- 629 In section 103, page 113, line 12, after <may> insert <also>

**Kenny MacAskill**

- 630 In section 103, page 113, line 15, leave out <non-disclosure> and insert <section 106>

**Kenny MacAskill**

- 631 In section 103, page 113, line 16, after <may> insert <also>

**Kenny MacAskill**

- 632 In section 103, page 113, line 20, leave out <non-disclosure> and insert <section 106>

**Kenny MacAskill**

- 633 In section 103, page 113, line 24, after <section> insert <104 or>

**Kenny MacAskill**

- 634 In section 103, page 113, line 26, leave out <non-disclosure> and insert <section 106>

**Kenny MacAskill**

- 635 In section 103, page 113, line 31, leave out <non-disclosure> and insert <section 106>

**Section 104**

**Kenny MacAskill**

- 636 In section 104, page 114, line 4, leave out <non-disclosure> and insert <section 106>

**Kenny MacAskill**

- 637 In section 104, page 114, line 12, leave out from <non-disclosure> to <accused> in line 16 and insert <section 106 order would be likely to cause a real risk of substantial harm or damage to the public interest>

**Kenny MacAskill**

- 638 In section 104, page 114, leave out lines 23 to 26 and insert—
- <(9) If after giving the prosecutor and, subject to subsection (10), the accused an opportunity to be heard, the court is satisfied that the conditions in subsection (4) of section 105 are met, the court may make an exclusion order under subsection (3) of that section.
  - (10) On the application of the prosecutor the court may exclude the accused from the hearing appointed under subsection (8).>

**Section 105**

**Kenny MacAskill**

- 639 In section 105, page 114, line 28, after <103(2)(b)> insert <or (3)>

**Kenny MacAskill**

- 640 In section 105, page 114, line 30, at end insert—
- <(2A) On the application of the prosecutor the court may exclude the accused from the hearing.>

**Kenny MacAskill**

- 641 In section 105, page 114, line 31, after <and> insert <, subject to subsection (2A),>

**Kenny MacAskill**

- 642 In section 105, page 114, line 31, after <heard> insert <on the applications for the exclusion order and the section 106 order to which it relates>

**Kenny MacAskill**

- 643 In section 105, page 114, line 36, leave out from <non-disclosure> to <accused> in line 39 and insert <section 106 order relates would be likely to cause a real risk of substantial harm or damage to the public interest>

**Section 106**

**Kenny MacAskill**

- 644 In section 106, page 115, line 3, leave out <non-disclosure> and insert <section 106>

**Kenny MacAskill**

- 645 In section 106, page 115, line 6, leave out subsection (2) and insert—

- <(2) The court must—
- (a) consider the item of information to which the application for a section 106 order relates,
  - (b) give the prosecutor and (if the court has not made an exclusion order) the accused the opportunity to be heard, and
  - (c) determine—
    - (i) whether the conditions in subsection (3) apply, and
    - (ii) if so, whether subsection (4) applies.>

**Kenny MacAskill**

- 646** In section 106, page 115, line 14, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2)(b), 90(2)(b), 94(1A)(b), 95(3)(b) or (*Change in circumstances following lodging of defence statement: summary proceedings*)(6)(b)>

**Bill Aitken**

- 164** In section 106, page 115, line 14, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2) or 90(2)(b)>

**Kenny MacAskill**

- 647** In section 106, page 115, line 15, at end insert—  
<( ) that section 89(3)(a) or (b) applies to the information,>

**Kenny MacAskill**

- 648** In section 106, page 115, line 16, leave out from <it> to <prejudice> in line 20 and insert <there would be a real risk of substantial harm or damage>

**Kenny MacAskill**

- 649** In section 106, page 115, line 23, leave out <non-disclosure> and insert <section 106>

**Kenny MacAskill**

- 650** In section 106, page 115, line 25, leave out from beginning to <conditions> in line 27 and insert <This subsection applies if the court considers that the item of information could be disclosed or partly disclosed in such a way that—  
(a) the condition>

**Kenny MacAskill**

- 651** In section 106, page 115, line 29, at end insert—  
<(4A) If the court considers that subsection (3) (but not subsection (4)) applies, it may make a section 106 order preventing disclosure of the information.  
(4B) If the court considers that subsection (4) applies, it may make a section 106 order requiring the information to be disclosed or partly disclosed to the accused in the manner specified in the order.>

**Kenny MacAskill**

652 In section 106, page 115, line 35, leave out subsection (6)

**After section 106**

**Kenny MacAskill**

653 After section 106, insert—

*<Orders preventing or restricting disclosure: Secretary of State*

**Order preventing or restricting disclosure: application by Secretary of State**

- (1) The Secretary of State may apply to the relevant court for an order under this section (a “section (*Order preventing or restricting disclosure: application by Secretary of State*) order”) in relation to the proposed disclosure by the prosecutor to the accused in relevant criminal proceedings of information which the prosecutor—
  - (a) is required to disclose by virtue of section 89(2)(b), 90(2)(b), 94(1A)(b), 95(3)(b) or (*Change in circumstances following lodging of defence statement: summary proceedings*)(6)(b), or
  - (b) intends to disclose otherwise than by virtue of this Part.
- (2) If the Secretary of State also makes an application in accordance with subsection (2) or (3) of section (*Application for ancillary orders: Secretary of State*), the relevant court must comply with subsections (6) and (7) of that section.
- (3) Where an application is made under subsection (1), the relevant court must—
  - (a) consider the item of information to which the application relates,
  - (b) give the Secretary of State and the prosecutor the opportunity to be heard,
  - (c) if the application relates to information which the prosecutor is required to disclose by virtue of section 89(2)(b), 90(2)(b), 94(1A)(b), 95(3)(b) or (*Change in circumstances following lodging of defence statement: summary proceedings*)(6)(b) and a non-attendance order has not been made, give the accused the opportunity to be heard, and
  - (d) determine—
    - (i) whether the conditions in subsection (4) apply, and
    - (ii) if so, whether subsection (5) applies.
- (4) The conditions are—
  - (a) that if the item of information were to be disclosed there would be a real risk of substantial harm or damage to the public interest,
  - (b) that withholding the item of information would be consistent with the accused’s receiving a fair trial, and
  - (c) that the public interest would be protected only if a section (*Order preventing or restricting disclosure: application by Secretary of State*) order of the type mentioned in subsection (6) were to be made.
- (5) This subsection applies if the court considers that the item of information could be disclosed or partly disclosed in such a way that—
  - (a) the condition in paragraph (a) of subsection (4) would not be met, and

- (b) the disclosure (or partial disclosure) would be consistent with the accused’s receiving a fair trial.
- (6) If the court considers that subsection (4) (but not subsection (5)) applies, it may make a section (*Order preventing or restricting disclosure: application by Secretary of State*) order preventing disclosure of the information.
- (7) If the court considers that subsection (5) applies, it may make a section (*Order preventing or restricting disclosure: application by Secretary of State*) order requiring the information to be disclosed or partly disclosed to the accused in the manner specified in the order.
- (8) For the purposes of subsection (7) the order may in particular specify that—
  - (a) the item of information be disclosed after removing or obscuring parts of it (whether by redaction or otherwise),
  - (b) extracts or summaries of the item of information (or part of it) be disclosed instead of the item of information.
- (9) If an application is made under this section the relevant criminal proceedings must be adjourned until the application is disposed of or withdrawn.
- (10) In this section and sections (*Application for ancillary orders: Secretary of State*) to (*Application for non-attendance order*)—
  - “relevant court” means the court before which relevant criminal proceedings are taking place,
  - “relevant criminal proceedings” means criminal proceedings relating to the item of information to which the application under this section relates.>

**Kenny MacAskill**

**654** After section 106, insert—

**<Application for ancillary orders: Secretary of State**

- (1) This section applies where the Secretary of State applies for a section (*Order preventing or restricting disclosure: application by Secretary of State*) order.
- (2) If the application under section (*Order preventing or restricting disclosure: application by Secretary of State*) relates to solemn proceedings, the Secretary of State may also apply to the relevant court for—
  - (a) a restricted notification order and a non-attendance order, or
  - (b) a non-attendance order (but not a restricted notification order).
- (3) If the application under section (*Order preventing or restricting disclosure: application by Secretary of State*) relates to summary proceedings, the Secretary of State may also apply to the court for a non-attendance order.
- (4) A restricted notification order is an order under section (*Application for restricted notification order and non-attendance order*) prohibiting notice being given to the accused of—
  - (a) the making of an application for—
    - (i) the section (*Order preventing or restricting disclosure: application by Secretary of State*) order to which the restricted notification order relates,
    - (ii) the restricted notification order, and

- (iii) a non-attendance order, and
  - (b) the determination of those applications.
- (5) A non-attendance order is an order under section (*Application for non-attendance order*) prohibiting the accused from attending or making representations in proceedings for the determination of the application for the section (*Order preventing or restricting disclosure: application by Secretary of State*) order to which the non-attendance order relates.
- (6) Subsection (7) applies where the Secretary of State applies—
  - (a) by virtue of subsection (2)(a) for a restricted notification order and a non-attendance order, or
  - (b) by virtue of subsection (2)(a) or (b) for a non-attendance order.
- (7) Before determining the application for the section (*Order preventing or restricting disclosure: application by Secretary of State*) order, the court must—
  - (a) in accordance with section (*Application for restricted notification order and non-attendance order*), determine any application for a restricted notification order and a non-attendance order,
  - (b) in accordance with section (*Application for non-attendance order*), determine any application for a non-attendance order.>

**Kenny MacAskill**

**655** After section 106, insert—

**<Application for restricted notification order and non-attendance order**

- (1) This section applies where by virtue of section (*Application for ancillary orders: Secretary of State*)(2)(a) the Secretary of State applies for a restricted notification order and a non-attendance order.
- (2) On receiving the application, the relevant court must appoint a hearing to determine whether a restricted notification order should be made.
- (3) The accused is not to be notified of—
  - (a) the applications for the section (*Order preventing or restricting disclosure: application by Secretary of State*) order, the restricted notification order and the non-attendance order, or
  - (b) the hearing appointed under subsection (2).
- (4) The accused is not to be given the opportunity to be heard or be represented at the hearing.
- (5) If, after giving the Secretary of State and the prosecutor an opportunity to be heard, the court is satisfied that the conditions in subsection (6) are met, the court may make a restricted notification order.
- (6) Those conditions are—
  - (a) that disclosure to the accused of the making of the application for the section (*Order preventing or restricting disclosure: application by Secretary of State*) order would be likely to cause a real risk of substantial harm or damage to the public interest, and

- (b) that, having regard to all the circumstances, the making of a restricted notification order would be consistent with the accused's receiving a fair trial.
- (7) If the court makes a restricted notification order, it must also make a non-attendance order.
- (8) If the court refuses to make a restricted notification order, the court must appoint a hearing to determine the application for a non-attendance order.
- (9) If after giving the Secretary of State, the prosecutor and, subject to subsection (10), the accused an opportunity to be heard, the court is satisfied that the conditions in subsection (5) of section (*Application for non-attendance order*) are met, the court may make a non-attendance order under subsection (4) of that section.
- (10) On the application of the Secretary of State the court may exclude the accused from the hearing appointed under subsection (8).>

**Kenny MacAskill**

**656** After section 106, insert—

**<Application for non-attendance order**

- (1) This section applies where by virtue of section (*Application for ancillary orders: Secretary of State*)(2)(b) the Secretary of State applies for a non-attendance order (but not a restricted notification order).
- (2) On receiving the application, the relevant court must appoint a hearing.
- (3) On the application of the Secretary of State the court may exclude the accused from the hearing.
- (4) If after giving the Secretary of State, the prosecutor and, if not excluded under subsection (3), the accused an opportunity to be heard the court is satisfied that the conditions in subsection (5) are met, the court may make a non-attendance order.
- (5) Those conditions are—
  - (a) that disclosure to the accused of the nature of the information to which the application for the section (*Order preventing or restricting disclosure: application by Secretary of State*) order relates would be likely to cause a real risk of substantial harm or damage to the public interest, and
  - (b) that, having regard to all the circumstances, the making of a non-attendance order would be consistent with the accused's receiving a fair trial.>

**Section 107**

**Kenny MacAskill**

**657** In section 107, page 116, leave out lines 6 and 7 and insert—

- <( ) an application for an exclusion order,
- ( ) an application for a section 106 order,
- ( ) an application for a restricted notification order,
- ( ) an application for a non-attendance order,



- ( ) an application for a section (*Order preventing or restricting disclosure: application by Secretary of State*) order,>

**Kenny MacAskill**

- 658** In section 107, page 116, line 11, leave out <to whom the application, review or appeal relates> and insert <in relation to the determination of the application, review or appeal>

**Kenny MacAskill**

- 659** In section 107, page 116, line 14, at end insert—
- <( ) Before deciding whether to appoint special counsel in a non-notification case, the court—
    - (a) must give the prosecutor an opportunity to be heard, but
    - (b) must not give the accused an opportunity to be heard.
  - ( ) Before deciding whether to appoint special counsel in a restricted notification case, the court—
    - (a) must give the prosecutor and the Secretary of State an opportunity to be heard,
    - (b) must not give the accused an opportunity to be heard.
  - ( ) Before deciding whether to appoint special counsel in any case other than a non-notification case or a restricted notification case, the court must give all the parties an opportunity to be heard.
  - ( ) The prosecutor may appeal to the High Court against a decision of the court not to appoint special counsel in any case.
  - ( ) The Secretary of State may appeal to the High Court against a decision of the court not to appoint special counsel in a restricted notification case.
  - ( ) The accused may appeal to the High Court against a decision not to appoint special counsel in any case other than a non-notification case or a restricted notification case.
  - ( ) In this section and section (*Role of special counsel*)—
    - “non-notification case” means a case where the court is determining—
      - (a) an application for a non-notification order,
      - (b) an application for review of the grant or refusal of a non-notification order,
      - (c) an appeal relating to such an order,
    - “restricted notification case” means a case where the court is determining—
      - (a) an application for a restricted notification order,
      - (b) an application for review of the grant or refusal of a restricted notification order,
      - (c) an appeal relating to such an order.>

**After section 107**

**Kenny MacAskill**

- 660** After section 107, insert—

**<Persons eligible for appointment as special counsel**

The court may appoint a person as special counsel under section 107(2) only if the person is a solicitor or advocate.>

**Kenny MacAskill**

**661** After section 107, insert—

**<Role of special counsel**

- (1) Special counsel’s duty is, in relation to the determination of the relevant application or appeal, to act in the best interests of the accused with a view only to ensuring that the accused receives a fair trial.
- (2) Special counsel—
  - (a) is entitled to see the confidential information, but
  - (b) must not disclose any of the confidential information to the accused or the accused’s representative (if any).
- (3) Special counsel appointed in a non-notification case or a restricted notification case must not—
  - (a) disclose to the accused or the accused’s representative (if any) the making of the relevant application or appeal, or
  - (b) otherwise communicate with the accused or the accused’s representative (if any) about the relevant application or appeal.
- (4) Special counsel appointed in any case other than a non-notification case or a restricted notification case must not communicate with the accused about the relevant application or appeal except—
  - (a) with the permission of the court, and
  - (b) where permission is given, in accordance with such conditions as the court may impose.
- (5) Before deciding whether to grant permission, the court must give—
  - (a) the prosecutor, and
  - (b) in the case of an application for a section (*Order preventing or restricting disclosure: application by Secretary of State*) order or a non-attendance order, the Secretary of State,an opportunity to be heard.
- (6) In this section—

“the confidential information” means—

  - (a) the information to which the relevant application or appeal relates, and
  - (b) a copy of the relevant application or appeal,

“relevant application or appeal” means the application or appeal referred to in section 107(1) in respect of which special counsel is appointed.>

**Kenny MacAskill**

**662** After section 107, insert—

## <Appeals

- (1) The prosecutor may appeal to the High Court against—
  - (a) the making of a section 106 order under section 106(4B),
  - (b) the making of a section (*Order preventing or restricting disclosure: application by Secretary of State*) order,
  - (c) the making of a restricted notification order,
  - (d) the making of a non-attendance order,
  - (e) the refusal of an application for a non-notification order,
  - (f) the refusal of an application for an exclusion order, or
  - (g) the refusal of an application for a section 106 order.
- (2) The accused may appeal to the High Court against the making of—
  - (a) an exclusion order under section 105(3),
  - (b) a section 106 order,
  - (c) a section (*Order preventing or restricting disclosure: application by Secretary of State*) order, or
  - (d) a non-attendance order.
- (3) The Secretary of State may appeal to the High Court against—
  - (a) the making of a section (*Order preventing or restricting disclosure: application by Secretary of State*) order under section (*Order preventing or restricting disclosure: application by Secretary of State*)(7),
  - (b) the refusal of an application for a restricted notification order,
  - (c) the refusal of an application for a non-attendance order, or
  - (d) the refusal of an application for a section (*Order preventing or restricting disclosure: application by Secretary of State*) order.
- (4) If special counsel was appointed in relation to an application for a non-notification order, special counsel may appeal to the High Court against the making of—
  - (a) the non-notification order, or
  - (b) a section 106 order in relation to the same item of information.
- (5) If special counsel was appointed in relation to an application for a restricted notification order, special counsel may appeal to the High Court against the making of—
  - (a) the restricted notification order, or
  - (b) a section (*Order preventing or restricting disclosure: application by Secretary of State*) order in relation to the same item of information.
- (6) An appeal must be lodged not later than 7 days after the decision appealed against.
- (7) The prosecutor is entitled to be heard in any appeal under this section.
- (8) The accused is entitled to be heard in an appeal under—
  - (a) subsection (1)(a) or (g) or (2)(b) unless—
    - (i) a non-notification order has been made, or
    - (ii) an exclusion order has been made,

- (b) subsection (1)(b), (2)(c) or (3)(a) or (d) unless—
    - (i) a restricted notification order has been made, or
    - (ii) a non-attendance order has been made,
  - (c) subsection (1)(d), (2)(d) or (3)(c) unless the court, on the application of the Secretary of State, excludes the accused from the hearing,
  - (d) subsection (1)(f) or (2)(a) unless the court, on the application of the prosecutor excludes the accused from the hearing.
- (9) The Secretary of State is entitled to be heard in an appeal under subsection (1)(b), (c) or (d), (2)(c) or (d) or (5).>

### **Section 108**

**Kenny MacAskill**

- 663** Leave out section 108

### **Section 109**

**Kenny MacAskill**

- 664** Leave out section 109

### **Section 110**

**Kenny MacAskill**

- 665** Leave out section 110

### **Section 111**

**Kenny MacAskill**

- 666** In section 111, page 116, line 35, leave out <non-disclosure> and insert <section 106>

**Kenny MacAskill**

- 667** In section 111, page 117, line 3, leave out from <, and> to end of line 6

**Bill Aitken**

- 165** In section 111, page 117, line 6, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2) or 90(2)(b)>

**Kenny MacAskill**

- 668** In section 111, page 117, line 7, after <be,> insert <special counsel or>

**Kenny MacAskill**

669 In section 111, page 117, line 8, leave out <non-disclosure> and insert <section 106>

**Kenny MacAskill**

670 In section 111, page 117, line 10, leave out <non-disclosure> and insert <section 106>

**Kenny MacAskill**

671 In section 111, page 117, line 13, leave out <non-disclosure> and insert <section 106>

**Kenny MacAskill**

672 In section 111, page 117, line 16, after <prosecutor> insert <or, as the case may be, special counsel>

**Kenny MacAskill**

673 In section 111, page 117, line 19, leave out <non-disclosure> and insert <section 106>

**Kenny MacAskill**

674 In section 111, page 117, line 22, after <prosecutor> insert <or, as the case may be, special counsel>

**Kenny MacAskill**

675 In section 111, page 117, line 26, leave out <non-disclosure> and insert <section 106>

**Kenny MacAskill**

676 In section 111, page 117, line 27, leave out <non-disclosure> and insert <section 106>

**Kenny MacAskill**

677 In section 111, page 117, line 29, leave out <non-disclosure> and insert <section 106>

**Kenny MacAskill**

678 In section 111, page 117, line 33, leave out <non-disclosure> and insert <section 106>

**After section 111**

**Kenny MacAskill**

679 After section 111, insert—

**<Review of section (*Order preventing or restricting disclosure: application by Secretary of State*) order**

(1) This section applies where—

(a) the court makes a section (*Order preventing or restricting disclosure: application by Secretary of State*) order, and

- (b) during the relevant period the Secretary of State, the prosecutor, special counsel or the accused becomes aware of information that was unavailable to the court at the time when the order was made.
- (2) The Secretary of State or, as the case may be, the prosecutor, special counsel or the accused may apply to the court to review the order.
- (3) Except in the case mentioned in subsection (4), the same persons are entitled to be heard on the application for review as were entitled to be heard on the application for the order.
- (4) If—
  - (a) a restricted notification order was granted in relation to the order which is under review, and
  - (b) the court is satisfied that the conditions in section (*Application for restricted notification order and non-attendance order*)(6) are met,
 the court may, where the Secretary of State or, as the case may be, the prosecutor or special counsel applies for the review, make an order prohibiting notification of the application for review being given to the accused.
- (5) If—
  - (a) a non-attendance order was granted in relation to the order which is under review, and
  - (b) the court is satisfied that the conditions in section (*Application for non-attendance order*)(5) are met,
 the court may, where the Secretary of State or, as the case may be, the prosecutor, special counsel or the accused applies for the review, exclude the accused from the review.
- (6) If the court is not satisfied that the conditions mentioned in section (*Order preventing or restricting disclosure: application by Secretary of State*)(4) are met, the court may—
  - (a) recall the order which is under review, or
  - (b) recall the order which is under review and make an order requiring the information to be disclosed or partly disclosed to the accused in the specified manner.
- (7) Nothing in this section affects any right of appeal in relation to the order which is under review.
- (8) In this section—
  - “specified” means specified in the order of the court,
  - “the relevant period”, in relation to an accused, means the period—
    - (a) beginning with the making of the section (*Order preventing or restricting disclosure: application by Secretary of State*) order, and
    - (b) ending with the conclusion of the proceedings against the accused.>

## Section 112

### Kenny MacAskill

680 In section 112, page 118, line 6, leave out <non-disclosure> and insert <section 106>

### Kenny MacAskill

681 In section 112, page 118, line 6, after <order> insert <or a section (*Order preventing or restricting disclosure: application by Secretary of State*) order>

### Kenny MacAskill

682 In section 112, page 118, line 7, after <consider> insert <in relation to each order>

### Kenny MacAskill

683 In section 112, page 118, line 8, leave out <non-disclosure order> and insert <order concerned>

### Kenny MacAskill

684 In section 112, page 118, line 10, leave out <non-disclosure order> and insert <order concerned>

### Kenny MacAskill

685 In section 112, page 118, line 12, leave out <90(4)> and insert <111(8)>

## Section 113

### Kenny MacAskill

686 In section 113, page 118, line 21, leave out <non-disclosure> and insert <section 106>

### Kenny MacAskill

687 In section 113, page 118, line 30, leave out <non-disclosure> and insert <section 106>

## After section 115

### Kenny MacAskill

688\* After section 115, insert—

#### <Abolition of common law rules about disclosure

- (1) The provisions of this Part replace any equivalent common law rules about disclosure of information by the prosecutor in connection with criminal proceedings.
- (2) The common law rules about disclosure of information by the prosecutor in connection with criminal proceedings are abolished in so far as they are replaced by or are inconsistent with the provisions of this Part.

- (3) Sections (*Application by accused for ruling on disclosure*) and (*Application by appellant for ruling on disclosure*) do not affect any right under the common law of an accused or appellant to seek disclosure or recovery of information by or from the prosecutor by means of a procedure other than an application under one or other of those sections.
- (4) Subsection (5) applies where, following an application (the “earlier disclosure application”) by the accused or the appellant under section (*Application by accused for ruling on disclosure*) or section (*Application by appellant for ruling on disclosure*), the court has made a ruling that (as the case may be)—
  - (a) section 89(3) does not apply to information, or
  - (b) information does not fall within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).
- (5) The accused or, as the case may be, the appellant, is not entitled to seek the disclosure or recovery of the same information by or from the prosecutor by means of any other procedure at common law on grounds that are substantially the same as any of those on which the earlier disclosure application was made.
- (6) Subsection (7) applies where, following an application (the “earlier common law application”) by the accused under a procedure other than an application under section (*Application by accused for ruling on disclosure*) or (*Application by appellant for ruling on disclosure*), the court has decided not to make an order for the recovery or disclosure of information by or from the prosecutor.
- (7) The accused or, as the case may be, the appellant is not entitled to make an application under section (*Application by accused for ruling on disclosure*) or (*Application by appellant for ruling on disclosure*) in relation to the same information on grounds that are substantially the same as any of those on which the earlier common law application was made.
- (8) In this section, “appellant” has the meaning given by section (*Sections (Duty to disclose after conclusion of proceedings at first instance) to (Review of ruling under section (Application by appellant for ruling on disclosure))*): *interpretation*).>

## Section 116

### Kenny MacAskill

- 689** In section 116, page 119, line 20, leave out from <“prosecutor”> to end of line 21 and insert—
- <“investigating agency” has the meaning given by section (*Provision of information to prosecutor: solemn cases*)(4),
- “procurator fiscal” and “prosecutor” have the meanings given by section 307(1) of the 1995 Act.>

### Kenny MacAskill

- 690** In section 116, page 119, line 24, leave out <89(5) and (6),> and insert <89(2)(b),
- ( ) section (*Disclosure of other information: solemn cases*)(2),>

### Bill Aitken

- 166** In section 116, page 119, line 24, leave out from <89(5)> to end of line 27 and insert <89(2),



- (b) section 90(1) and (2),
- (c) section 93(2) (where it first occurs),>

**Kenny MacAskill**

- 691** In section 116, page 119, leave out line 26

**Kenny MacAskill**

- 692** In section 116, page 119, leave out line 30

**Section 117**

**Angela Constance**

- 24** In section 117, page 120, line 10, at end insert <, or  
(b) to determine or control that conduct despite being able to appreciate the nature or wrongfulness of it.>

**Kenny MacAskill**

- 167** In section 117, page 120, line 31, leave out <it> and insert <such abnormality>

**Section 121**

**Kenny MacAskill**

- 168** In section 121, page 123, leave out lines 2 and 3 and insert—  
<(3A) No order may be made under subsection (1) unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.>

**Section 122**

**Kenny MacAskill**

- 169** In section 122, page 125, line 1, leave out from <5,> to <29> in line 2 and insert <5 and 11>

**Section 123**

**Robert Brown**

- 385** Leave out section 123

**After section 124**

**Kenny MacAskill**

- 170** After section 124, insert—

**<Licensing of street trading: food hygiene certificates**

- (1) Section 39 of the 1982 Act (street traders' licences) is amended as follows.
- (2) In subsection (4), for the words from "the requirements" to the end substitute "such requirements as the Scottish Ministers may by order made by statutory instrument specify".
- (3) After subsection (4), insert—
  - (5) An order under subsection (4) may specify requirements by reference to provision contained in another enactment.
  - (6) A statutory instrument containing an order made under subsection (4) is subject to annulment in pursuance of a resolution of the Scottish Parliament.".>

**Section 125**

**Kenny MacAskill**

- 171** In section 125, page 128, line 24, at beginning insert <In>

**Kenny MacAskill**

- 172** In section 125, page 128, line 24, leave out from <is> to <In> in line 26 and insert <, in>

**Cathie Craigie**

- 2** In section 125, page 128, line 25, leave out subsection (2)

**Cathie Craigie**

- 3** In section 125, page 128, line 26, leave out subsection (3)

**Cathie Craigie**

**Supported by: Robert Brown**

- 4** Leave out section 125

**After section 127**

**Sandra White**

- 516** After section 127, insert—

**<Control of lap dancing and other adult entertainment venues**

- (1) The 1982 Act is amended as follows.
- (2) In section 41(2) (definition of place of public entertainment), after paragraph (aa) insert—

“(ab) adult entertainment venues (as defined in section 45A) in relation to which Schedule 2 (as modified for the purposes of that section) have effect, while being used as such;”.
- (3) The title of Part 3 becomes “Control of sex shops and adult entertainment venues”.

(4) After section 45 insert—

**“45A Control of lap dancing and other adult entertainment venues**

- (1) A local authority may resolve that Schedule 2, as modified for the purposes of this section, is to have effect in their area in relation to adult entertainment venues; and, if they do so resolve, that Schedule (as so modified) has effect from the day specified in the resolution.
- (2) The day referred to in subsection (1) must not be before the expiry of the period of one month beginning with the day on which the resolution is passed.
- (3) A local authority must, not later than 28 days before the day referred to in subsection (1), publish notice that they have passed a resolution under this section in a newspaper circulating in their area.
- (4) The notice is to state the general effect of Schedule 2, as modified for the purposes of this section.
- (5) For the purposes of this section, Schedule 2 is modified as follows—
  - (a) in paragraph 1, sub-paragraphs (b)(ii) (and the word “or” immediately preceding it) and (c) are omitted;
  - (b) for paragraph 2 substitute—

“2 In this Schedule, “adult entertainment venue” has the same meaning as in section 45A.”;
  - (c) in paragraph 9—
    - (i) after sub-paragraph (5)(c) insert—

“(ca) where it is intended to sell alcohol in the adult entertainment venue, an application for the grant, renewal or transfer of a premises licence under Part 3 of the Licensing (Scotland) Act 2005 (asp 16) relating to that venue has been refused;”;
    - (ii) after sub-paragraph (6) insert—

“(6A) A local authority may refuse an application for the grant or renewal of a licence despite the fact that a premises licence under Part 3 of the Licensing (Scotland) Act 2005 (asp 16) is in effect in relation to the adult entertainment venue.”;
  - (d) in paragraph 25, for “section 45” in each place where those words occur, substitute “section 45A”; and
  - (e) for “sex shop”, in each place where those words occur, substitute “adult entertainment venue”.
- (6) In this section, “adult entertainment venue” means any premises, vehicle, vessel or stall used for a business which consists to a significant degree of providing relevant entertainment before a live audience; and, for the purposes of that definition—
  - “audience” includes an audience of one;
  - “display of nudity” means—
    - (a) in the case of a woman, exposure of her breasts, nipples, pubic area, genitals or anus;
    - (b) in the case of a man, exposure of his pubic area, genitals or anus;

“relevant entertainment” means—

- (a) any live performance; or
- (b) any live display of nudity,

which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).”.>

## Section 128

### Kenny MacAskill

173 In section 128, page 129, line 25, at end insert—

- <( ) in paragraph 2(3)(b), after “application” insert “(other than the date and place of birth of any person)”,
- ( ) in paragraph 2(8)(a), after “application” insert “(other than the date and place of birth of any person)”.>

## Section 129

### Kenny MacAskill

174 Leave out section 129

## After section 130

### Bill Aitken

460 After section 130, insert—

#### <Premises licence applications: crime prevention objective

In section 23(5) of the 2005 Act (grounds for refusal of premises licence application), after paragraph (b), insert—

- “(ba) that the appropriate chief constable has made a recommendation under section 21(5) that the application be refused.”.>

## After section 131

### Kenny MacAskill

175 After section 131, insert—

#### <Reviews of premises licences: notification of determinations

- (1) The 2005 Act is amended as follows.
- (2) After section 39 (Licensing Board’s powers on review), insert—

#### “39A Notification of determinations

- (1) Where a Licensing Board, at a review hearing—

- (a) decides to take one of the steps mentioned in section 39(2), or
  - (b) decides not to take one of those steps,
- the Board must give notice of the decision to each of the persons mentioned in subsection (2).
- (2) The persons referred to in subsection (1) are—
    - (a) the holder of the premises licence, and
    - (b) where the decision is taken in connection with a premises licence review application, the applicant.
  - (3) Where subsection (1)(a) applies, the holder of the premises licence may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the decision.
  - (4) Where—
    - (a) subsection (1)(a) or (b) applies, and
    - (b) the decision is taken in connection with a premises licence review application,
 the applicant may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the decision.
  - (5) Where the clerk of a Board receives a notice under subsection (3) or (4), the Board must issue a statement of the reasons for the decision to—
    - (a) the person giving the notice, and
    - (b) any other person to whom the Board gave notice under subsection (1).
  - (6) A statement of reasons under subsection (5) must be issued—
    - (a) by such time, and
    - (b) in such form and manner,
 as may be prescribed.”.>

**After section 132**

**George Foulkes**

**542** After section 132, insert—

**<Premises licence applications: disability compliance statements**

In section 20 of the 2005 Act (application for premises licence), after subsection (4)(f), insert—

“(fa) a statement of compliance with Part 3 of the Disability Discrimination Act 1995, including information as to where reasonable adjustments have been or will be made to remove barriers to access for disabled people.”.>

**Bill Aitken**

**547** After section 132, insert—

**<Premises licence: minor variations**

- (1) Section 29(6) of the 2005 Act (definition of minor variations to premises licence) is amended as follows.
- (2) In paragraph (a), insert at the end “or if the variation relates only to parts of the premises to which the public does not have access”.
- (3) After paragraph (c) insert—
  - “(ca) any reduction in the capacity of the premises,
  - (cb) any change in the name by which the business carried on in the premises is to be known or under which it trades,
  - (cc) any variation of the layout plan or operating plan required by virtue of any enactment relating to planning, building control, food safety or fire safety.”.>

**Robert Brown**

**550** After section 132, insert—

**<Premises licence: transfer on application of person other than licence holder**

- (1) Section 34 (transfer on application of person other than licence holder) of the 2005 Act is amended as follows.
- (2) In subsection (3)—
  - (a) the word “and” immediately preceding paragraph (d) is repealed, and
  - (b) after that paragraph insert “, and
  - “(e) for any other reason, the business that was (prior to the event in question) carried on in the licensed premises to which the licence relates ceases to be carried on in those premises.”.
- (3) In subsection (4), insert at the beginning “Subject to subsection (4A),”.
- (4) After that subsection insert—

“(4A) In the case of an application made following the event specified in subsection (3)(e)—

  - (a) subsection (8) of section 33 applies as if, after the words “the Board must” there were inserted “, if satisfied in all the circumstances that it is reasonable to do so,”, and
  - (b) subsection (10)(b) of that section applies as if, after the words “if not so satisfied,” there were inserted “but otherwise satisfied that in all the circumstances it is reasonable to do so.”.>

**Kenny MacAskill**

**693** After section 132, insert—

**<Premises licences: connected persons and interested parties**

- (1) The 2005 Act is amended as follows.
- (2) After section 40 insert—

*“Connected persons and interested parties*

**40A Connected persons and interested parties: licence holder’s duty to notify changes**

- (1) A premises licence holder must, not later than one month after a person becomes or ceases to be—
    - (a) a connected person in relation to the licence holder, or
    - (b) an interested party in relation to the licensed premises,give the appropriate Licensing Board notice of that fact.
  - (2) A notice under subsection (1) that a person has become a connected person or an interested party must specify—
    - (a) the name and address of the person, and
    - (b) if the person is an individual, the person’s date of birth.
  - (3) Where a Licensing Board receives a notice under subsection (1), the Board must give a copy of the notice to the appropriate chief constable.
  - (4) A premises licence holder who fails, without reasonable excuse, to comply with subsection (1) commits an offence.
  - (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.”.
- (3) In section 48 (notification of change of name or address)—
- (a) in subsection (1)—
    - (i) the word “or” immediately following paragraph (a) is repealed, and
    - (ii) after paragraph (b) insert “, or
  - (c) the name or address of any person who is—
    - (i) a connected person in relation to the licence holder, or
    - (ii) an interested party in relation to the licensed premises,”,
  - (b) after subsection (2) insert—

“(2A) Where a Licensing Board receives a notice under subsection (1), the Board must give a copy of the notice to the appropriate chief constable.”.
- (4) In section 147 (interpretation), after subsection (4) insert—
- “(5) For the purposes of this Act, a person is an interested party in relation to licensed premises if the person is not the holder of the premises licence nor the premises manager in respect of the premises but—
- (a) has an interest in the premises as an owner or tenant, or
  - (b) has management and control over the premises or the business carried on on the premises.”.

(5) In section 148 (index of defined expressions), in the table, insert at the appropriate place—

“interested party	section 147(5).”.>
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**Robert Brown**

**543** After section 132, insert—

### <Provisional premises licences

- (1) Section 45 (provisional premises licence) of the 2005 Act is amended as follows.
- (2) In subsection (6), for “2 years” substitute “5 years”.
- (3) In subsection (8), paragraph (b) and the word “and” immediately preceding it are repealed.
- (4) In subsection (10), for paragraphs (a) and (b) substitute—
  - “(a) for subsection (2) there were substituted—
  - “(2) An application under subsection (1) must be accompanied by—
    - (a) a plan sufficient to identify the site of the subject premises and give a general indication of their size,
    - (b) a document giving a general indication of—
      - (i) the anticipated capacity of the premises,
      - (ii) the hours during which it is proposed to serve alcohol on the premises,
      - (iii) the extent to which it is proposed to allow children or young persons entry to the premises, and
    - (c) the certificate required by section 50(2).”, and
  - (b) subsections (4) and (5) were omitted.”.
- (5) After subsection (10) insert—

“(10A) Sections 21 to 32 have effect in relation to any provisional premises licence application and to any provisional premises licence as if references to—

  - (a) the operating plan were read as references to the document required under section 20(2)(b) (as substituted by subsection (10)(a)), and
  - (b) the layout plan were read as references to the plan required under section 20(2)(a) (as so substituted).”.>

### **Kenny MacAskill**

**176** After section 132, insert—

#### <Premises licence applications: food hygiene certificates

- (1) Section 50 of the 2005 Act (certificates as to planning, building standards and food hygiene) is amended as follows.
- (2) In subsection (7), for the words from “the requirements” to the end substitute “such requirements as the Scottish Ministers may, by order, specify.”.
- (3) After subsection (7), insert—

“(7A) An order under subsection (7) may specify requirements by reference to provision contained in another enactment.”.
- (4) In subsection (8)(c), for “the 1990 Act” substitute “section 5 of the Food Safety Act 1990 (c.16)”.>



### After section 133

#### Bill Aitken

548 After section 133, insert—

#### <Consumption of alcohol on licensed premises outwith licensed hours

In section 63(2) of the 2005 Act (exceptions to offence of allowing sale, consumption etc. of alcohol outwith licensed hours), after paragraph (f) insert—

- “(g) allow alcohol to be consumed on licensed premises at any time within 45 minutes of the end of any period of licensed hours by—
- (i) the premises licence holder,
  - (ii) the premises manager, or
  - (iii) any person aged 18 or over who, at the end of that period of licensed hours, was working on the premises.”.>

### Section 134

#### Kenny MacAskill

539 In section 134, page 134, line 17, leave out from <after> to end of line 22 and insert <in subparagraph (4), after “Board” in the second place where it appears insert “or to a member of staff provided under paragraph 8(1)(b)”.>

### After section 134

#### Kenny MacAskill

449 After section 134, insert—

#### <Extended hours applications: notification period

- (1) Section 69 of the 2005 Act (notification of extended hours application) is amended as follows.
- (2) After subsection (3), add—
  - “(4) Subsections (5) and (6) apply where the Licensing Board is satisfied that the application requires to be dealt with quickly.
  - (5) Subsections (2) and (3) have effect in relation to the application as if the references to the period of 10 days were references to such shorter period of not less than 24 hours as the Board may determine.
  - (6) Subsection (3) has effect in relation to the application as if for the word “must” there were substituted “may”.”.>

### Section 136

#### Kenny MacAskill

177 In section 136, page 135, line 3, at end insert—

- <“(ba) the notice does not include a recommendation under section 73(4),>

### **Kenny MacAskill**

**178** In section 136, page 135, leave out lines 22 to 27 and insert—

- <(a) hold a hearing for the purposes of considering and determining the application, and
- (b) after having regard to the circumstances in which the personal licence previously held expired or, as the case may be, was surrendered—
  - (i) refuse the application, or
  - (ii) grant the application.”.>

### **After section 137**

### **Kenny MacAskill**

**179** After section 137, insert—

#### **<Appeals**

In section 131(2) of the 2005 Act (appeals), the words “by way of stated case, at the instance of the appellant,” are repealed.>

### **Kenny MacAskill**

**694** After section 137, insert—

#### **<Liability for offences**

- (1) The 2005 Act is amended as follows.
- (2) In each of the following provisions, the word “knowingly” is repealed—
  - (a) section 1(3)(b),
  - (b) section 103(1),
  - (c) section 106(2),
  - (d) section 107(1),
  - (e) section 118(1),
  - (f) section 120(2) and (3),
  - (g) section 121(1),
  - (h) section 127(4), and
  - (i) section 128(5).
- (3) After section 141 (offences by bodies corporate etc.) insert—

**“141A Defence of due diligence for certain offences**

  - (1) It is a defence for a person charged with an offence to which this section applies to prove that the person—
    - (a) did not know that the offence was being committed, and
    - (b) exercised all due diligence to prevent the offence being committed.
  - (2) This section applies to an offence under any of the following provisions of this Act—

section 1(3)(b),  
section 103(1),  
section 106(2),  
section 107(1),  
section 118(1),  
section 120(2) or (3),  
section 121(1),  
section 127(4),  
section 128(5).

**141B Vicarious liability of premises licence holders and interested parties**

- (1) Subsection (2) applies where, on or in relation to any licensed premises, a person commits an offence to which this section applies while acting as the employee or agent of—
  - (a) the holder of the premises licence, or
  - (b) an interested party.
- (2) The holder of the premises licence or, as the case may be, the interested party is also guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) It is a defence for a holder of a premises licence or an interested party charged with an offence to which this section applies by virtue of subsection (2) to prove that the holder of the licence or, as the case may be, the interested party—
  - (a) did not know that the offence was being committed by the employee or agent, and
  - (b) exercised all due diligence to prevent the offence being committed.
- (4) Proceedings may be taken against the holder of the premises licence or the interested party in respect of the offence whether or not proceedings are also taken against the employee or agent who committed the offence.
- (5) This section applies to an offence under any of the following provisions of this Act—

section 1(3),  
section 15(5),  
section 63(1),  
section 97(7),  
section 102(1),  
section 103(1),  
section 106(2),  
section 107(1),  
section 108(2) or (3),

section 113(1),  
section 114,  
section 115(2),  
section 118(1),  
section 119(1),  
section 120(2),  
section 121(1),  
section 138(5).”.>

#### **Schedule 4**

##### **Kenny MacAskill**

**180** In schedule 4, page 149, line 11, leave out <22(2) or>

##### **Kenny MacAskill**

**181** In schedule 4, page 150, leave out lines 18 to 21

#### **Section 140**

##### **Kenny MacAskill**

**182** Leave out section 140

#### **Section 142**

##### **Kenny MacAskill**

**183** Leave out section 142

#### **Section 143**

##### **Kenny MacAskill**

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

<( ) an order under section (*Mutual recognition of judgments and probation decisions*)(1),>

##### **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),>

##### **Kenny MacAskill**

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

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

**Kenny MacAskill**

186 In section 143, page 138, leave out line 33

**Kenny MacAskill**

187 In section 143, page 138, line 33, at end insert—

<( ) an order under section 146(1) containing provisions which modify any enactment (including this Act), or>

**Kenny MacAskill**

188 In section 143, page 138, line 34, leave out <146(1) or>

**Robert Brown**

392 In section 143, page 138, line 35, at end insert <or

( ) an order under section 148(1) bringing into force section 17(1), (2) or (3),>

**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),>

**Schedule 5**

**Kenny MacAskill**

189 In schedule 5, page 151, line 35, at end insert—

<*The Libel Act 1792 (c.60)*

The Libel Act 1792 is repealed.

*The Criminal Libel Act 1819 (c.8)*

The Criminal Libel Act 1819 is repealed.

*The Defamation Act 1952 (c.66)*

In the Defamation Act 1952, section 17(2) is repealed.>

**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)”.>

**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.>

**Kenny MacAskill**

- 190 In schedule 5, page 152, line 24, at end insert—
- <*The Incest and Related Offences (Scotland) Act 1986 (c.36)*
- The Incest and Related Offences (Scotland) Act 1986 is repealed.>

**Kenny MacAskill**

- 191 In schedule 5, page 153, line 3, after <89> insert <, 111>

**Kenny MacAskill**

- 192 In schedule 5, page 153, line 3, at end insert—
- <*The Trade Union and Labour Relations (Consolidation) Act 1992 (c.52)*
- In section 243(4)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992 (restriction of offence of conspiracy: Scotland), the words “or sedition” are repealed.>

**Kenny MacAskill**

- 193 In schedule 5, page 153, line 12, at end insert—
- <*The Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40)*
- In Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (minor and consequential amendments), in paragraph 44, sub-paragraph (2) is repealed.>

**Kenny MacAskill**

- 386 In schedule 5, page 153, line 35, at end insert—
- <In section 11 (certain offences committed outside Scotland)—
- (a) in subsection (3), for “proceeded against, indicted” substitute “prosecuted”,
  - (b) in subsection (4), for “dealt with, indicted” substitute “prosecuted”.>

**Kenny MacAskill**

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

<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**

**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.>

### **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)”.>

### **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—

(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**

**457** In schedule 5, page 155, line 3, at end insert—

<In section 79 (preliminary pleas and preliminary issues), in subsection (2)(b)(ii), after “under section” insert “22ZB(3)(b),”.>

### **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**

- 414** In schedule 5, page 155, line 31, leave out paragraphs 35 to 39

#### **Kenny MacAskill**

- 515** In schedule 5, page 157, line 8, at end insert—

<*The Offensive Weapons Act 1996 (c.26)*

In the Offensive Weapons Act 1996, section 5 is repealed.>

#### **Kenny MacAskill**

- 194** In schedule 5, page 157, line 8, at end insert—

<*The Defamation Act 1996 (c.31)*

In the Defamation Act 1996, section 20(2) is repealed.>

#### **Kenny MacAskill**

- 195** In schedule 5, page 157, line 10, leave out paragraph 44 and insert—

<(1) The Crime and Punishment (Scotland) Act 1997 is amended as follows.

- (2) In section 9 (power to specify hospital unit), in subsection (1)(a), for “insane” substitute “found not criminally responsible or unfit for trial”.

- (3) In section 13 (increase in sentences available to sheriff and district courts), subsection (2) is repealed.

- (4) In section 56 (powers of the court on remand or committal of children and young persons), subsection (3) is repealed.>

**Kenny MacAskill**

**196** In schedule 5, page 157, line 28, at end insert—

*<The Legal Deposit Libraries Act 2003 (c.28)*

Section 10 of the Legal Deposit Libraries Act 2003 (exemption from liability: activities in relation to publications) is amended as follows—

- (a) in subsection (1), the words “, or subject to any criminal liability,” are repealed,
- (b) in subsection (2)(a), the words “in the case of liability in damages” are repealed,
- (c) in subsection (3), the words “, or subject to any criminal liability,” are repealed,
- (d) in subsection (4)(a), the words “in the case of liability in damages” are repealed,
- (e) in subsection (6)(a), the words “, or subject to any criminal liability,” are repealed, and
- (f) in subsection (8), the words “and criminal liability” are repealed.>

**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.>

**Kenny MacAskill**

**695** In schedule 5, page 158, line 32, at end insert—

*<In section 74 (appointment of stipendiary magistrates), subsection (6) is repealed.*

*After section 74 insert—*

**“74A Exercise of functions by stipendiary magistrates**

- (1) A stipendiary magistrate may, by reason of holding that office—
  - (a) exercise the same judicial and signing functions as are exercisable by a JP,
  - (b) do so in the same manner as a JP (including by using the title of office of JP).
- (2) For the purpose of subsection (1)—
  - (a) the acts of a stipendiary magistrate are valid as if the magistrate were a JP,
  - (b) it does not matter if an enactment from which a JP derives authority to act in a specific case does not bear to give equivalent authority to a stipendiary magistrate.

- (3) However, subsections (1) and (2) are subject to any provision of an enactment which expressly excludes a stipendiary magistrate from acting in a specific case.
- (4) This section does not limit any other functions of a stipendiary magistrate (in particular, those exercisable in that capacity only).”.

In section 76 (signing functions)—

- (a) in subsection (2), for “signing functions in the same manner as” substitute “the same signing functions as are exercisable by”,
- (b) subsection (4) is repealed.>

**Kenny MacAskill**

- 197** In schedule 5, page 158, line 36, at end insert <and  
(ii) sub-paragraph (b) is repealed.>

**Kenny MacAskill**

- 387** In schedule 5, page 159, line 12, at end insert—  
<*The Sexual Offences (Scotland) Act 2009 (asp 9)*  
In section 55(7) of the Sexual Offences (Scotland) Act 2009 (offences committed outside the United Kingdom), for “proceeded against, indicted” substitute “prosecuted”.>

**Kenny MacAskill**

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



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ISBN 978-1-4061-6337-7

£15.00

ISBN 978-1-4061-6337-7



9 781406 163377