

# Criminal Justice (Scotland) Bill

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## 3rd Groupings of Amendments for Stage 2

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

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

### Groupings of amendments

#### **Police powers of search**

223, 224, 225, 226, 227, 228, 229, 229A, 230, 230A, 231, 232, 232A, 233, 233A, 233B, 50, 51, 51A, 52, 53

#### **Power to arrest without warrant and meaning of arrest**

111, 112, 37

#### **Replacement of common law power of arrest without warrant, statutory power to detain etc. by section 1 power of arrest**

234, 235, 236, 237, 240, 241, 256, 257, 259

#### **Provision of information to arrested person**

113, 114, 238, 239, 10, 11

#### **Release from police custody prior to arrival at police station**

115, 118

#### **Minor and drafting amendments**

116, 117, 121, 124, 132, 133, 138, 140, 194, 205, 221

#### **Information to be given if sexual offence**

119, 148

#### **Social work involvement in relation to under 18s in police custody**

120, 170, 171, 176, 180, 181, 188

#### **Keeping person not officially accused in custody: period, authorisation, review, etc.**

122, 123, 12, 125, 13, 126, 127, 128, 129, 130, 131, 14, 134, 15, 16, 135, 136, 137, 17, 139, 141

**Period for which child or vulnerable adult may be kept in custody without being officially accused**

242

**Arrest and custody of person with responsibility for child**

39, 110, 41, 42, 43, 44, 45, 260

**Investigative liberation: release on conditions**

18, 142, 47, 143, 19, 145, 20, 146, 147, 21, 22, 23, 24, 25, 26, 27

*Notes on amendments in this group*

Amendment 18 pre-empts amendment 142

Amendments 145 pre-empts amendment 20

Amendment 147 pre-empts amendment 121

**Breach of liberation condition**

144, 158, 159, 198, 199, 200, 201, 202, 203, 204

**Requirement to bring officially accused person before court as soon as practicable**

149

**Duties of police in relation to under 18s**

150, 150A, 151, 152, 65, 255, 196, 197, 222

**Release on undertaking**

153, 154, 155, 48, 156, 157, 160, 161, 162, 163, 164

*Notes on amendments in this group*

Amendment 155 pre-empts amendment 48

**Provision of information prior to interview**

28, 165, 166

**Circumstances in which interview may take place without solicitor present or in which sending of intimation or consultation with solicitor may be delayed**

29, 243, 244, 245, 246, 247, 248, 250, 251, 253

*Notes on amendments in this group*

Amendment 29 pre-empts amendments 243 and 244

**Rights of under 18s: consent to interview without solicitor present, sending of intimation and access to other person, other support**

55, 56, 167, 57, 58, 168, 59, 60, 173, 61, 62, 63, 64, 38, 32

*Notes on amendments in this group*

Amendment 58 pre-empts amendment 168

Amendment 63 in this group pre-empts amendments 184 and 185 in the group "Rights of under 18s: minor amendments"

Amendment 38 pre-empts amendment 32

**Vulnerable persons: consent to interview without solicitor present, support etc.**

30, 31, 169, 33, 189, 34, 190, 249, 191, 220

*Notes on amendments in this group*

Amendment 31 pre-empts amendment 169

Amendment 34 pre-empts amendment 190

**Rights of under 18s: minor amendments**

172, 174, 175, 177, 178, 179, 182, 183, 184, 185, 186, 187

*Notes on amendments in this group*

Amendments 184 and 185 in this group are pre-empted by amendment 63 in the group “Rights of under 18s: consent to interview without solicitor present, sending of intimation and access to other person, other support”

**Means of consultation with solicitor**

252, 192, 193

*Notes on amendments in this group*

Amendment 252 pre-empts amendment 192

**Powers in relation to biometric information**

254

**Care of drunken persons**

195

**Disclosure of information relating to persons not officially accused**

35, 36

**Modification of enactments in connection with Part 1**

206, 207, 208, 209, 210, 211, 212, 213, 215, 216

**Application of Part 1 in relation to arrests under other enactments**

214, 217, 218, 219

**Code of practice about investigative functions**

258

**Amendments already debated**

**Participation of detained person in proceedings through TV link**

With 73 (on Day 2) – 101

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**Amendments in debating order**

**Police powers of search**

**Michael Matheson**

**223** Before section 1, insert—

**<PART**

**POLICE PROCEDURES**

**CHAPTER 1**

**SEARCH OF PERSON NOT IN POLICE CUSTODY**

*Lawfulness of search by constable*

**Limitation on what enables search**

- (1) This section applies in relation to a person who is not in police custody.
- (2) It is unlawful for a constable to search the person otherwise than—
  - (a) in accordance with a power of search conferred in express terms by an enactment, or
  - (b) under the authority of a warrant expressly conferring a power of search.>

**Michael Matheson**

**224** Before section 1, insert—

**<Cases involving removal of person**

- (1) A person who is not in police custody may be searched by a constable while the person is to be, or is being, taken to or from any place by virtue of any enactment, warrant or court order requiring or permitting the constable to do so.
- (2) A search under this section is to be carried out for the purpose of ensuring that the person is not in, or does not remain in, possession of any item or substance that could cause harm to the person or someone else.
- (3) Anything seized by a constable in the course of a search carried out under this section may be retained by the constable.>

**Michael Matheson**

**225** Before section 1, insert—

**<Duty to consider child's best interests**

- (1) Subsection (2) applies when a constable is deciding whether to search a child who is not in police custody.
- (2) In taking the decision, the constable must treat the need to safeguard and promote the wellbeing of the child as a primary consideration.
- (3) For the purposes of this section, a child is a person who is under 18 years of age.>

**Michael Matheson**

**226** Before section 1, insert—

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*<Miscellaneous and definitions*

### **Provisions about possession of alcohol**

- (1) The Scottish Ministers may by regulations amend section 61 (confiscation of alcohol from persons under 18) of the Crime and Punishment (Scotland) Act 1997 so as to confer on a constable a power, exercisable in addition to the power in subsection (1) or (2) of that section—
  - (a) to search a person for alcoholic liquor,
  - (b) to dispose of anything found in the person’s possession that the constable believes to be such liquor.
- (2) Prior to laying before the Scottish Parliament a draft of an instrument containing regulations under this section, the Scottish Ministers must consult publicly on the regulations that they are proposing to make.
- (3) Regulations under this section are subject to the affirmative procedure.>

### **Michael Matheson**

**227** Before section 1, insert—

**<Matters as to effect of sections (*Limitation on what enables search*), (*Cases involving removal of person*) and (*Provisions about possession of alcohol*)**

- (1) The day appointed for the coming into force of sections (*Limitation on what enables search*) and (*Cases involving removal of person*) is to be the same as the day from which a code of practice required by section (*Contents of code of practice*)(1) has effect by virtue of the first regulations made under section (*Bringing code of practice into effect*).
- (2) If no regulations under section (*Provisions about possession of alcohol*) are made before the end of the 2 years beginning with the day from which a code of practice required by section (*Contents of code of practice*)(1) has effect by virtue of the first regulations made under section (*Bringing code of practice into effect*), section (*Provisions about possession of alcohol*) is to be regarded as repealed at the end of that period.>

### **Michael Matheson**

**228** Before section 1, insert—

**<Meaning of constable etc.**

In this Chapter—

“constable” has the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012,

“police custody” has the same meaning as given for the purposes of Part 1 (see section 56).>

### **Michael Matheson**

**229** Before section 1, insert—

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## <CHAPTER 2

### CODE OF PRACTICE

#### *Making and status of code*

#### **Contents of code of practice**

- (1) The Scottish Ministers must make a code of practice about the carrying out of a search of a person who is not in police custody.
- (2) A code of practice is to apply to the functions exercisable by a constable.
- (3) In this section—
  - “constable” has the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012,
  - “police custody” has the same meaning as given for the purposes of Part 1 (see section 56).
- (4) In this Chapter, a reference to a code of practice means one required by subsection (1) (but see also section *(Review of code of practice)(4)*).>

**Alison McInnes**

**Supported by: Margaret Mitchell**

**229A\***As an amendment to amendment 229, line 7, at end insert—

- <( ) A code of practice must set out—
- (a) the circumstances in which such a search may be carried out,
  - (b) the procedure to be followed in carrying out such a search,
  - (c) the record to be kept, and the right of any person to receive a copy of the record, of such a search,
  - (d) such other matters as the Scottish Ministers consider appropriate.>

**Michael Matheson**

**230** Before section 1, insert—

#### **<Review of code of practice**

- (1) The Scottish Ministers may revise a code of practice in light of a review conducted under subsection (2).
- (2) The Scottish Ministers must conduct a review of a code of practice as follows—
  - (a) a review is to begin no later than 2 years after the code comes into effect,
  - (b) subsequently, a review is to begin no later than 4 years after—
    - (i) if the code is revised in light of the previous review under this subsection, the coming into effect of the revised code, or
    - (ii) otherwise, the completion of the previous review under this subsection.
- (3) In deciding when to conduct a review in accordance with subsection (2), the Scottish Ministers must have regard to representations put to them on the matter by—
  - (a) the Scottish Police Authority,
  - (b) the Chief Constable of the Police Service of Scotland, or

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- (c) Her Majesty's Inspectors of Constabulary in Scotland.
- (4) For the purposes of—
  - (a) section (*Contents of code of practice*)(2) and this section (except subsection (2)(a)), and
  - (b) sections (*Legal status of code of practice*) to (*Bringing code of practice into effect*),a reference to a code of practice includes a revised code as allowed by subsection (1).>

**Alison McInnes**

**Supported by: Margaret Mitchell**

**230A** As an amendment to amendment 230, line 10, at end insert—

- <( ) Each review conducted under subsection (2) must be completed within 6 months of the day it begins.>

**Michael Matheson**

**231** Before section 1, insert—

**<Legal status of code of practice**

- (1) A court or tribunal in civil or criminal proceedings must take a code of practice into account when determining any question arising in the proceedings to which the code is relevant.
- (2) Breach of a code of practice does not of itself give rise to grounds for any legal claim whatsoever.>

**Michael Matheson**

**232** Before section 1, insert—

*<Procedure applying to code*

**Consultation on code of practice**

- (1) Prior to making a code of practice, the Scottish Ministers must consult publicly on a draft of the code.
- (2) When preparing a draft of a code of practice for public consultation, the Scottish Ministers must consult—
  - (a) the Lord Justice General,
  - (b) the Faculty of Advocates,
  - (c) the Law Society of Scotland,
  - (d) the Scottish Police Authority,
  - (e) the Chief Constable of the Police Service of Scotland,
  - (f) the Scottish Human Rights Commission,
  - (g) the Commissioner for Children and Young People in Scotland, and
  - (h) such other persons as the Scottish Ministers consider appropriate.>

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### John Finnie

- 232A As an amendment to amendment 232, line 14, after <Scotland,> insert—  
<( ) the Police Investigations and Review Commissioner,>

### Michael Matheson

- 233 Before section 1, insert—  
<**Bringing code of practice into effect**  
(1) A code of practice has no effect until a day appointed by regulations made by the Scottish Ministers.  
(2) When laying before the Scottish Parliament a draft of an instrument containing regulations bringing a code of practice into effect, the Scottish Ministers must also so lay a copy of the code.  
(3) Regulations under this section are subject to the affirmative procedure.>

### Alison McInnes

#### Supported by: Margaret Mitchell

- 233A As an amendment to amendment 233, line 4, at end insert—  
<( ) As soon as practicable after the completion of each review under subsection (2) of section (*Review of code of practice*) the Scottish Ministers must appoint a day by regulations for the coming into effect of a revised code of practice (whether or not the code of practice has been revised in light of the review).>

### Alison McInnes

#### Supported by: Margaret Mitchell

- 233B As an amendment to amendment 233, line 7, at end insert—  
<( ) A draft of an instrument containing regulations bringing the first code of practice into effect must be laid before the Scottish Parliament no later than one year after the day of Royal Assent.>

### Alison McInnes

#### Supported by: John Finnie

- 50 Before section 1, insert—

#### <PART

#### SEARCH BY POLICE OF PERSON NOT ARRESTED

#### **Police powers of search where person not arrested**

- (1) A constable must not search—  
(a) a person,  
(b) a vehicle, or  
(c) anything which is in or on a vehicle,  
without a warrant, unless subsection (3) applies.  
(2) It is immaterial whether the person consents to being the subject of a search.  
(3) This subsection applies where the search is conducted in accordance with—



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- (a) a power conferred by an enactment, and
  - (b) the terms of a code of practice issued by the Scottish Ministers under section (*Police powers of search where person not arrested: code of practice*).
- (4) This Part applies to a vessel, aircraft or hovercraft as it applies to a vehicle.
- (5) For the purposes of subsection (4), “vessel” includes any ship, boat, raft or other apparatus constructed or adapted for floating on water.>

**Alison McInnes**

**Supported by: John Finnie**

**51\*** Before section 1, insert—

**<Police powers of search where person not arrested: code of practice**

- (1) The Scottish Ministers must, by regulations, set out a code of practice in connection with the exercise by constables of powers under any enactment to search a person who has not been arrested in connection with an offence.
- (2) The code of practice must set out—
  - (a) the circumstances in which any such power may be exercised,
  - (b) the procedure to be followed in the exercise of any such power,
  - (c) the record to be kept, and the right of any person to receive a copy of the record, of the exercise of any such power, and
  - (d) such other matters as the Scottish Ministers consider appropriate.
- (3) Regulations for the first code of practice under subsection (1) must be laid before the Parliament no later than the end of the period of one year beginning with the day of Royal Assent.
- (4) The Scottish Ministers must—
  - (a) keep the code of practice under review, and
  - (b) lay regulations for a revised code of practice before the Parliament no later than 4 years after the day on which regulations for the previous code of practice are laid.
- (5) Before making regulations under subsection (1) setting out the first or a revised code of practice, the Scottish Ministers must consult—
  - (a) the chief constable,
  - (b) the Scottish Police Authority,
  - (c) the Scottish Human Rights Commission,
  - (d) the Commissioner for Children and Young People in Scotland, and
  - (e) such other persons as they consider appropriate,on a draft of the code of practice.
- (6) Regulations under subsection (1) are subject to the affirmative procedure.>

**John Finnie**

**51A\*** As an amendment to amendment 51, line 24, after <Scotland,> insert—

<( ) the Police Investigations and Review Commissioner,>

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**Alison McInnes**

**Supported by: John Finnie**

**52** Before section 1, insert—

**<Police powers of search: annual reporting**

In subsection (3) of section 39 (the Scottish Police Authority’s annual report) of the Police and Fire Reform (Scotland) Act 2012—

- (a) the word “and” at the end of paragraph (a) is repealed, and
- (b) after paragraph (b) there is inserted “and
- (c) a record of the number of searches without a warrant of persons not arrested carried out by the Police Service during the reporting year, including in particular and where practicable a record of—
  - (i) the number of instances where an individual has been searched on more than one occasion,
  - (ii) the profile, as regards age, gender and ethnic or national origin, of those searched,
  - (iii) the proportion of searches that resulted in anything being found,
  - (iv) the proportion of searches that resulted in a matter being reported to the procurator fiscal, and
  - (v) the number of complaints made to the Police Service about the conduct of searches.”.>

**Alison McInnes**

**53** In section 42, page 20, line 18, at end insert—

<( ) search a child,>

### **Power to arrest without warrant and meaning of arrest**

**Michael Matheson**

**111** In section 1, page 1, leave out lines 18 to 20 and insert—

- <( ) continue committing the offence, or
- ( ) obstruct the course of justice in any way, including by—
  - (i) seeking to avoid arrest, or
  - (ii) interfering with witnesses or evidence.>

**Michael Matheson**

**112** In section 1, page 1, line 20, at end insert—

<( ) For the avoidance of doubt, an offence is to be regarded as not punishable by imprisonment for the purpose of subsection (2) only if no person convicted of the offence can be sentenced to imprisonment in respect of it.>

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**John Pentland**

37 Before section 54, insert—

**<Meaning of arrest**

In this Part, “arrest” means—

- (a) depriving a person of liberty of movement for the purpose of the purported investigation or prevention of crime, and
- (b) taking the person to a police station in accordance with section 4.>

**Replacement of common law power of arrest without warrant, statutory power to detain etc. by section 1 power of arrest**

**Margaret Mitchell**

234 Leave out section 1

**Margaret Mitchell**

235 Leave out section 2

**Margaret Mitchell**

236 Leave out section 3

**Margaret Mitchell**

237 Leave out section 4

**Margaret Mitchell**

240 Leave out section 5

**Margaret Mitchell**

241 Leave out section 6

**Margaret Mitchell**

256 Leave out section 50

**Margaret Mitchell**

257 Leave out section 51

**Margaret Mitchell**

259 In schedule 1, page 46, line 2, leave out <14> and insert <15>

**Provision of information to arrested person**

**Michael Matheson**

113 In section 2, page 1, line 25, at end insert—

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<( ) Where—

- (a) a constable who is not in uniform arrests a person under section 1, and
  - (b) the person asks to see the constable's identification,
- the constable must show identification to the person as soon as reasonably practicable.>

### **Michael Matheson**

- 114** In section 3, page 2, line 9, at end insert <, and  
( ) of the person's right to have—
- (i) intimation sent to a solicitor under section 35, and
  - (ii) access to a solicitor under section 36.>

### **Alison McInnes**

- 238** In section 5, page 2, line 22, at end insert—  
<( ) section 24,>

### **Alison McInnes**

- 239** In section 5, page 2, line 24, at end insert—  
<( ) section 33,>

### **John Finnie**

- 10** In section 5, page 2, line 28, leave out <(verbally or in writing)>

### **John Finnie**

- 11** In section 5, page 2, line 30, at end insert <(and, regardless of whether those Articles allow or require information to be provided in writing only, the person must be provided with all such information both verbally and in writing).>

## **Release from police custody prior to arrival at police station**

### **Michael Matheson**

- 115** In section 4, page 2, line 12, at end insert—
- <(2) Subsection (1) ceases to apply, and the person must be released from police custody immediately, if—
- (a) the person has been arrested without a warrant,
  - (b) the person has not yet arrived at a police station in accordance with this section, and
  - (c) in the opinion of a constable there are no reasonable grounds for suspecting that the person has committed—
    - (i) the offence in respect of which the person was arrested, or
    - (ii) an offence arising from the same circumstances as that offence.

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- (3) For the avoidance of doubt, subsection (1) ceases to apply if, before arriving at a police station in accordance with this section, the person is released from custody under section 19(2).>

### **Michael Matheson**

118 In section 6, page 3, line 5, at end insert—

- <( ) Where relevant, there must be recorded in relation to an arrest by a constable—
- (a) the reason that the constable who released the person from custody under subsection (2) of section 4 formed the opinion mentioned in paragraph (c) of that subsection,>

### **Minor and drafting amendments**

#### **Michael Matheson**

116 In section 6, page 2, line 32, at end insert <by a constable>

#### **Michael Matheson**

117 In section 6, page 3, line 5, at end insert—

- <( ) the time at which the person ceases to be in police custody.>

#### **Michael Matheson**

121 In section 6, page 3, leave out lines 17 to 21

#### **Michael Matheson**

124 In section 8, page 4, line 22, after <reason> insert <that>

#### **Michael Matheson**

132 In section 11, page 5, line 17, leave out from <a> to <(a)> in line 18 and insert—

- <(a) a person>

#### **Michael Matheson**

133 In section 11, page 5, line 20, leave out <time> and insert <period>

#### **Michael Matheson**

138 In section 13, page 6, line 18, leave out <time> and insert <period>

#### **Michael Matheson**

140 In section 13, page 6, line 22, leave out <time> and insert <period>

#### **Michael Matheson**

194 In section 39, page 20, leave out line 2 and insert—

- <( ) cause the person to participate in an identification procedure.>

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### Michael Matheson

- 205 In section 50, page 24, line 27, leave out <relation to> and insert <respect of>

### Michael Matheson

- 221 In section 54, page 25, line 7, leave out <99> and insert <99(1)>

### Information to be given if sexual offence

### Michael Matheson

- 119 In section 6, page 3, line 9, at end insert—  
<( ) the time at which, and the identity of the person by whom, the person is informed of the matters mentioned in section (*Information to be given if sexual offence*),>

### Michael Matheson

- 148 Before section 18, insert—  
<**Information to be given if sexual offence**  
(1) Subsection (2) applies when—  
(a) a person is in police custody having been arrested under a warrant in respect of a sexual offence to which section 288C of the 1995 Act applies, or  
(b) a person—  
(i) is in police custody having been arrested without a warrant, and  
(ii) since being arrested, the person has been charged by a constable with a sexual offence to which section 288C of the 1995 Act applies.  
(2) The person must be informed as soon as reasonably practicable—  
(a) that the person's case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A) of the 1995 Act) in the course of the proceedings may be conducted only by a lawyer,  
(b) that it is, therefore, in the person's interests to get the professional assistance of a solicitor, and  
(c) that if the person does not engage a solicitor for the purposes of the conduct of the person's case at or for the purposes of the hearing, the court will do so.>

### Social work involvement in relation to under 18s in police custody

### Michael Matheson

- 120 In section 6, page 3, line 14, at end insert—  
<( ) section (*Social work involvement in relation to under 18s*),>

### Michael Matheson

- 170 In section 30, page 16, line 22, at end insert <, or

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- (c) safeguarding and promoting the wellbeing of the person in custody, where a constable believes that person to be under 18 years of age.>

**Michael Matheson**

**171** In section 30, page 16, line 22, at end insert—

- <( ) The sending of intimation may be delayed by virtue of subsection (5)(c) only for so long as is necessary to ascertain whether a local authority will arrange for someone to visit the person in custody under section (*Social work involvement in relation to under 18s*)(2).>

**Michael Matheson**

**176** In section 31, page 16, line 36, at end insert—

- <( ) a local authority, acting under section (*Social work involvement in relation to under 18s*)(8)(a), has advised against sending intimation to the person to whom intimation is to be sent by virtue of section 30(3).>

**Michael Matheson**

**180** In section 31, page 17, line 12, leave out <30(4)(b)> and insert <30(5)(a) or (b)>

**Michael Matheson**

**181** In section 31, page 17, line 14, leave out <30(4)(b)> and insert <30(5)(a) or (b)>

**Michael Matheson**

**188** After section 32, insert—

**<Social work involvement in relation to under 18s**

- (1) Intimation of the fact that a person is in police custody and the place where the person is in custody must be sent to a local authority as soon as reasonably practicable if—
  - (a) a constable believes that the person may be subject to a supervision order, or
  - (b) by virtue of subsection (5)(c) of section 30, a constable has delayed sending intimation in respect of the person under subsection (1) of that section.
- (2) A local authority sent intimation under subsection (1) may arrange for someone to visit the person in custody if—
  - (a) the person is subject to a supervision order, or
  - (b) the local authority—
    - (i) believes the person to be under 16 years of age, and
    - (ii) has grounds to believe that its arranging someone to visit the person would best safeguard and promote the person's wellbeing (having regard to the effect of subsection (4)(a)).
- (3) Before undertaking to arrange someone to visit the person in custody under subsection (2), the local authority must be satisfied that anyone it arranges to visit the person in custody will be able to make the visit within a reasonable time.
- (4) Where a local authority arranges for someone to visit the person in custody under subsection (2)—
  - (a) sections 30 and 32 cease to have effect, and

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- (b) the person who the local authority has arranged to visit the person in custody must be permitted access to the person in custody.
- (5) In exceptional circumstances, access under subsection (4)(b) may be refused or restricted so far as the refusal or restriction is necessary—
  - (a) in the interests of—
    - (i) the investigation or prevention of crime, or
    - (ii) the apprehension of offenders, or
  - (b) for the wellbeing of the person in custody.
- (6) Where a local authority sent intimation under subsection (1) confirms that the person in custody is—
  - (a) over 16 years of age, and
  - (b) subject to a supervision order,sections 30 to 32 are to be applied in respect of the person as if a constable believes the person to be under 16 years of age.
- (7) Subsection (8) applies where a local authority might have arranged for someone to visit a person in custody under subsection (2) but—
  - (a) chose not to do so, or
  - (b) was precluded from doing so by subsection (3).
- (8) The local authority may—
  - (a) advise a constable that the person to whom intimation is to be sent by virtue of section 30(3) should not be sent intimation if the local authority has grounds to believe that sending intimation to that person may be detrimental to the wellbeing of the person in custody, and
  - (b) give advice as to who might be an appropriate person to a constable considering that matter under section 31(5) (and the constable must have regard to any such advice).
- (9) In this section, “supervision order” means compulsory supervision order, or interim compulsory supervision order, made under the Children’s Hearings (Scotland) Act 2011.>

### **Keeping person not officially accused in custody: period, authorisation, review, etc.**

#### **Michael Matheson**

- 122** In section 6, page 3, line 27, after <any> insert <custody>

#### **Michael Matheson**

- 123** In section 6, page 3, line 29, at end insert—

<( ) If a constable considers whether to give authorisation under section (*Authorisation for keeping in custody beyond 12 hour limit*) there must be recorded—

- (a) whether a reasonable opportunity to make representations has been afforded in accordance with subsection (4)(a) of that section,



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- (b) if the opportunity referred to in paragraph (a) has not been afforded, the reason for that,
  - (c) the time, place and outcome of the constable's decision, and
  - (d) if the constable's decision is to give the authorisation—
    - (i) the grounds on which it is given,
    - (ii) the time at which, and the identity of the person by whom, the person is informed and reminded of things in accordance with section (*Information to be given on authorisation under section (Authorisation for keeping in custody beyond 12 hour limit)*), and
    - (iii) the time at which the person requests that intimation be sent under section (*Information to be given on authorisation under section (Authorisation for keeping in custody beyond 12 hour limit)*)(3)(a) and the time at which it is sent.
- ( ) Where a person is held in police custody by virtue of authorisation given under section (*Authorisation for keeping in custody beyond 12 hour limit*) there must be recorded—
- (a) the time, place and outcome of any custody review under section 9,
  - (b) the time at which any interview in the circumstances described in section 13(6) begins and the time at which it ends.>

### John Finnie

- 12 In section 7, page 4, line 13, after <who> insert—
- <( ) is of the rank of sergeant or above, and  
( )>

### Michael Matheson

- 125 In section 8, page 4, line 23, at end insert <and the fact that the person may be kept in custody for a further 12 hours under section (*Authorisation for keeping in custody beyond 12 hour limit*)>

### John Pentland

- 13 In section 8, page 4, line 23, at end insert <, and  
( ) the circumstances in which the 12 hour limit may be extended to 24 hours under section (*Extension of 12 hour limit to 24 hours in exceptional circumstances*).>

### Michael Matheson

- 126 In section 9, page 4, line 25, leave out from beginning to <consider> in line 29 and insert—
- <(1) A custody review must be carried out—
- (a) when a person has been held in police custody for a continuous period of 6 hours by virtue of authorisation given under section 7, and
  - (b) again, if authorisation to keep the person in police custody is given under section (*Authorisation for keeping in custody beyond 12 hour limit*), when the person has been held in custody for a continuous period of 6 hours by virtue of that authorisation.
- (2) A custody review entails the consideration by a constable of>

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**Michael Matheson**

- 127 In section 9, page 4, line 31, leave out <The constable mentioned in subsection (2) must be> and insert <A custody review must be carried out by>

**Michael Matheson**

- 128 Move section 9 to after section 12

**Michael Matheson**

- 129 In section 10, page 5, line 2, after <7(4)> insert <, (*Authorisation for keeping in custody beyond 12 hour limit*)(3)(b)>

**Michael Matheson**

- 130 In section 10, page 5, line 12, at end insert <fully>

**Michael Matheson**

- 131 Move section 10 to after section 12

**John Pentland**

- 14 In section 11, page 5, line 21, at beginning insert <Subject to section (*Extension of 12 hour limit to 24 hours in exceptional circumstances*),>

**Michael Matheson**

- 134 In section 11, page 5, line 22, at end insert <, or  
( ) authorisation to keep the person in custody has been given under section  
(*Authorisation for keeping in custody beyond 12 hour limit*)>

**John Pentland**

- 15 After section 11, insert—
- <Extension of 12 hour limit to 24 hours in exceptional circumstances**
- (1) Section 11(2) does not apply if the conditions in subsection (2) are met.
  - (2) The conditions are that a constable who is of the rank of inspector or above is satisfied—
    - (a) that the test in section 10 is met, and
    - (b) that there are exceptional circumstances that justify continuing to hold the person in police custody.
  - (3) A person may continue to be held in police custody by virtue of subsection (2) for more than a continuous period of 24 hours only if a constable charges the person with an offence.
  - (4) Without prejudice to the generality of subsection (2)(b), “exceptional circumstances” includes circumstances—
    - (a) where a doctor certifies that the person is, whether due to the influence of alcohol or drugs or for some other reason, not fit to be interviewed before the end of the 12 hour period mentioned in section 11,
    - (b) where the constable mentioned in subsection (2) considers that—

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- (i) access to another person in accordance with section 32, or
  - (ii) support from another person in accordance with section 33,
- cannot be provided in sufficient time before the end of the 12 hour period,
- (c) where the constable mentioned in subsection (2) considers that continuing to hold the person in police custody is essential to ensure the safety of the person or another person.
- (5) The Scottish Ministers may, by regulations subject to the affirmative procedure, modify subsection (4) to further define, add to, remove or otherwise modify circumstances that may constitute “exceptional circumstances” for the purposes of subsection (2)(b).>

### John Pentland

- 16 In section 12, page 5, line 33, after <11> insert <, and as the case may be the 24 hour period mentioned in section (*Extension of 12 hour limit to 24 hours in exceptional circumstances*),>

### Michael Matheson

- 135 After section 12, insert—

#### <Authorisation for keeping in custody beyond 12 hour limit

- (1) A constable may give authorisation for a person who is in police custody to be kept in custody for a continuous period of 12 hours, beginning when the 12 hour period mentioned in section 11 ends.
- (2) Authorisation may be given only by a constable who—
  - (a) is of the rank of inspector or above, and
  - (b) has not been involved in the investigation in connection with which the person is in police custody.
- (3) Authorisation may be given only if—
  - (a) the person has not been held in police custody by virtue of authorisation given under this section in connection with—
    - (i) the offence in connection with which the person is in police custody, or
    - (ii) an offence arising from the same circumstances as that offence, and
  - (b) the constable is satisfied that—
    - (i) the test in section 10 will be met when the 12 hour period mentioned in section 11 ends,
    - (ii) the offence in connection with which the person is in police custody is an indictable offence, and
    - (iii) the investigation is being conducted diligently and expeditiously.
- (4) Before deciding whether or not to give authorisation the constable must—
  - (a) where practicable afford a reasonable opportunity to make verbal or written representations to—
    - (i) the person, or
    - (ii) if the person so chooses, the person’s solicitor, and
  - (b) have regard to any representations made.

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- (5) If authorisation is given, it is deemed to be withdrawn if the person is released from police custody before the 12 hour period mentioned in section 11 ends.
- (6) Subsection (7) applies when—
  - (a) by virtue of authorisation given under this section, a person has been held in police custody for a continuous period of 12 hours (beginning with the time at which the 12 hour period mentioned in section 11 ended), and
  - (b) during that period the person has not been charged with an offence by a constable.
- (7) The person may continue to be held in police custody only if a constable charges the person with an offence.>

### Michael Matheson

136 After section 12, insert—

**<Information to be given on authorisation under section (*Authorisation for keeping in custody beyond 12 hour limit*)**

- (1) This section applies when authorisation to keep a person in custody is given under section (*Authorisation for keeping in custody beyond 12 hour limit*).
- (2) The person must be informed—
  - (a) that the authorisation has been given, and
  - (b) of the grounds on which it has been given.
- (3) The person—
  - (a) has the right to have the information mentioned in subsection (2) intimated to a solicitor, and
  - (b) must be informed of that right.
- (4) The person must be reminded about any right which the person has under Chapter 5.
- (5) Subsection (4) does not require that a person be reminded about a right to have intimation sent under either of the following sections if the person has exercised the right already—
  - (a) section 30,
  - (b) section 35.
- (6) Information to be given under subsections (2), (3)(b) and (4) must be given to the person as soon as reasonably practicable after the authorisation is given.
- (7) Where the person requests that intimation be sent under subsection (3)(a), the intimation must be sent as soon as reasonably practicable.>

### Michael Matheson

137 In section 13, page 6, line 17, leave out <section 11> and insert <sections 11 and (*Authorisation for keeping in custody beyond 12 hour limit*)>

### John Pentland

17 In section 13, page 6, line 17, at end insert <and as the case may be the 24 hour period mentioned in section (*Extension of 12 hour limit to 24 hours in exceptional circumstances*).>

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### Michael Matheson

- 139 In section 13, page 6, line 21, leave out <to a hospital for that purpose> and insert <as quickly as is reasonably practicable—
- (i) to a hospital for the purpose of receiving medical treatment, or
  - (ii) to a police station from a hospital to which the person was taken for the purpose of receiving medical treatment.>

### Michael Matheson

- 141 In section 13, page 6, line 23, after <to> insert <or from>

### **Period for which child or vulnerable adult may be kept in custody without being officially accused**

#### Alison McInnes

- 242 After section 7, insert—
- <Time limit for keeping in custody: children and vulnerable adults**
- (1) Subsection (2) applies where authorisation has been given under section 7 to keep in custody—
    - (a) a person under 18 years of age, or
    - (b) a person 18 years of age or over who appears to a constable to have a mental disorder.
  - (2) A person to whom this subsection applies may not be held in police custody for a continuous period of more than 6 hours.
  - (3) In subsection (1)(b), “mental disorder” has the meaning given in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003.>

### **Arrest and custody of person with responsibility for child**

#### Mary Fee

- 39\* In section 10, page 5, line 12, at end insert—
- <( ) the effect of keeping the person in custody on the wellbeing of a child for whom the person has responsibility,>

#### Mary Fee

- 110 After section 34, insert—

*<Persons with responsibility for a child*

#### **Duty to contact named person: persons with responsibility for a child**

- (1) This section applies where a constable believes that a person in police custody has responsibility for a child.

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- (2) With a view to ensuring the wellbeing of the child, the constable must send information of the type specified in subsection (3) to an individual identified in relation to the child under section 20 or 21 of the Children and Young People (Scotland) Act 2014.
- (3) The information to be sent is to contain details of any matters relevant to the child's wellbeing, and to the child's wellbeing needs.
- (4) Information falls within subsection (3) if the constable considers that—
  - (a) it is likely to be relevant to the exercise of the named person functions in relation to the child or young person,
  - (b) it is necessary or expedient for the purposes of the exercise of any of the named person functions,
  - (c) it ought to be provided for that purpose, and
  - (d) the provision of the information would not prejudice the conduct of any criminal investigation or the prosecution of any offence.
- (5) In considering for the purpose of subsection (4)(c) whether information ought to be provided, the constable is, so far as reasonably practicable, to ascertain and have regard to the views of the child.
- (6) In having regard to the views of a child under subsection (5), the constable is to take account of the child's age and maturity.
- (7) For the purpose of subsection (4)(c) the information ought to be provided only if the likely benefit to the wellbeing of the child arising in consequence of doing so outweighs any likely adverse effect on that wellbeing arising from doing so.
- (8) The Scottish Ministers may by regulations make further provision relating to the sending of information under subsection (2) above.
- (9) Regulations under subsection (8) are subject to the affirmative procedure.>

### **Mary Fee**

- 41** In section 42, page 20, line 19, at end insert <or person who has responsibility for a child>

### **Mary Fee**

- 42** In section 42, page 20, line 20, after <child> insert <or person who has responsibility for a child>

### **Mary Fee**

- 43** In section 42, page 20, line 21, after <child> insert <or person who has responsibility for a child>

### **Mary Fee**

- 44** In section 42, page 20, line 22, after <child> insert <or person>

### **Mary Fee**

- 45** In section 42, page 20, line 23, after <child> insert <or person who has responsibility for a child>

### **Mary Fee**

- 260** After section 56, insert—

#### **<Meaning of responsibility for a child**

- (1) In this Part, “child” means a person who has not attained the age of 18 years.

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- (2) In this Part, references to a person who has responsibility for a child include references to any person who—
- (a) is liable to maintain, or has parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to, the child, or
  - (b) has care of the child.>

### **Investigative liberation: release on conditions**

#### **John Finnie**

- 18 In section 14, page 6, line 32, leave out from <and> to end of line 33

#### **Michael Matheson**

- 142 In section 14, page 6, leave out line 33 and insert—
- <( ) either—
- (i) the person has not been subject to a condition imposed under subsection (2) in connection with a relevant offence, or
  - (ii) it has not been more than 28 days since the first occasion on which a condition was imposed on the person under subsection (2) in connection with a relevant offence.>

#### **Elaine Murray**

- 47 In section 14, page 6, line 35, leave out from <ensuring> to end of line 36 and insert <securing—
- (a) that the person surrenders to custody if required to do so,
  - (b) that the person does not commit an offence while released,
  - (c) that the person does not interfere with a witness or otherwise obstruct the course of the investigation into a relevant offence,
  - (d) the protection of the person, or
  - (e) if the person is under 18 years of age, the welfare or interests of the person.>

#### **Michael Matheson**

- 143 In section 14, page 6, line 36, at end insert—
- <( ) A condition under subsection (2)—
- (a) may not require the person to be in a specified place at a specified time,
  - (b) may require the person—
    - (i) not to be in a specified place, or category of place, at a specified time, and
    - (ii) to remain outwith that place, or any place falling within the specified category (if any), for a specified period.>

#### **John Finnie**

- 19 In section 14, page 6, line 36, at end insert—

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<(2A) When imposing a condition under subsection (2), the constable is to specify the period for which the condition is to apply.

(2B) The period specified under subsection (2A) is to be such period, not exceeding 28 days, as the appropriate constable considers necessary and proportionate for the purpose of ensuring the proper conduct of the investigation into a relevant offence.

(2C) In any case where a person has previously been subject to a condition imposed under subsection (2) in connection with a relevant offence, the reference in subsection (2B) to 28 days is to be read as a reference to 28 days minus the number of days on which the person was so subject.>

### **Michael Matheson**

145 In section 14, page 6, line 39, leave out subsection (4)

### **John Finnie**

20 In section 14, page 6, line 39, leave out from <(1)(c)> to end of line 3 on page 7 and insert <(2C)>

### **Michael Matheson**

146 In section 14, page 7, line 7, leave out <inspector> and insert <sergeant>

### **Michael Matheson**

147 In section 15, page 7, line 15, leave out from <last> to <14(4)> and insert <day falling 28 days after the first occasion on which a condition was imposed on the person under section 14(2) in connection with a relevant offence>

### **John Finnie**

21 In section 15, page 7, line 15, leave out <28 day period described in section 14(4)> and insert <period specified under section 14(2A)>

### **John Finnie**

22 In section 17, page 8, line 17, at end insert <,  
( ) to have the period for which the condition applies reduced.>

### **John Finnie**

23 In section 17, page 8, line 20, after <condition> insert <or, as the case may be, the period specified under section 14(2A)>

### **John Finnie**

24 In section 17, page 8, line 21, after <imposed> insert <or, as the case may be, specified>

### **John Finnie**

25 In section 17, page 8, line 23, after <condition> insert <or, as the case may be, specify an alternative period>

### **John Finnie**

26 In section 17, page 8, line 25, after <imposed> insert <or period specified>



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### John Finnie

- 27 In section 17, page 8, line 26, at end insert <or, as the case may be, specified under section 14(2A).>

### Breach of liberation condition

#### Michael Matheson

- 144 In section 14, page 6, line 38, leave out <Chapter 7> and insert <schedule (*Breach of liberation condition*)>

#### Michael Matheson

- 158 In section 20, page 9, line 38, leave out <Chapter 7> and insert <schedule (*Breach of liberation condition*)>

#### Michael Matheson

- 159 Before schedule 1, insert—

<SCHEDULE  
(introduced by sections 14(3) and 20(6))  
BREACH OF LIBERATION CONDITION

#### *Offence of breaching condition*

- 1 (1) A person commits an offence if, without reasonable excuse, the person breaches a liberation condition by reason of—
- (a) failing to comply with an investigative liberation condition,
  - (b) failing to appear at court as required by the terms of an undertaking, or
  - (c) failing to comply with the terms of an undertaking, other than the requirement to appear at court.
- (2) Sub-paragraph (1) does not apply where (and to the extent that) a person breaches a liberation condition by reason of committing an offence (in which case see paragraph 3).
- (3) It is competent to amend a complaint to include an additional charge of an offence under sub-paragraph (1) at any time before the trial of a person in summary proceedings for—
- (a) the original offence, or
  - (b) an offence arising from the same circumstances as the original offence.
- (4) In sub-paragraph (3), “the original offence” is the offence in connection with which—
- (a) an investigative liberation condition was imposed, or
  - (b) an undertaking was given.

#### *Sentencing for the offence*

- 2 (1) A person who commits an offence under paragraph 1(1) is liable on summary conviction to—
- (a) a fine not exceeding level 3 on the standard scale, or

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- (b) imprisonment for a period—
  - (i) where conviction is in the justice of the peace court, not exceeding 60 days,
  - (ii) where conviction is in the sheriff court, not exceeding 12 months.
- (2) A penalty under sub-paragraph (1) may be imposed in addition to any other penalty which it is competent for the court to impose, even if the total of penalties imposed exceeds the maximum penalty which it is competent to impose in respect of the original offence.
- (3) The reference in sub-paragraph (2) to a penalty being imposed in addition to another penalty means, in the case of sentences of imprisonment or detention—
  - (a) where the sentences are imposed at the same time (whether or not in relation to the same complaint), framing the sentences so that they have effect consecutively,
  - (b) where the sentences are imposed at different times, framing the sentence imposed later so that (if the earlier sentence has not been served) the later sentence has effect consecutive to the earlier sentence.
- (4) Sub-paragraph (3)(b) is subject to section 204A (restriction on consecutive sentences for released prisoners) of the 1995 Act.
- (5) Where a person is to be sentenced in respect of an offence under paragraph 1(1), the court may remit the person for sentence in respect of it to any court which is considering the original offence.
- (6) In sub-paragraphs (2) and (5), “the original offence” is the offence in connection with which—
  - (a) the investigative liberation condition was imposed, or
  - (b) the undertaking was given.

### *Breach by committing offence*

- 3 (1) This paragraph applies—
- (a) where (and to the extent that) a person breaches a liberation condition by reason of committing an offence (“offence O”), but
  - (b) only if the fact that offence O was committed while the person was subject to the liberation condition is specified in the complaint or indictment.
- (2) In determining the penalty for offence O, the court must have regard—
- (a) to the fact that offence O was committed in breach of a liberation condition,
  - (b) if the breach is by reason of the person’s failure to comply with the terms of an investigative liberation condition, to the matters mentioned in paragraph 4(1),
  - (c) if the breach is by reason of the person’s failure to comply with the terms of an undertaking other than the requirement to appear at court, to the matters mentioned in paragraph 5(1).
- (3) Where the maximum penalty in respect of offence O is specified by (or by virtue of) an enactment, the maximum penalty is increased—
- (a) where it is a fine, by the amount equivalent to level 3 on the standard scale,
  - (b) where it is a period of imprisonment—
    - (i) as respects conviction in the justice of the peace court, by 60 days,

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- (ii) as respects conviction in the sheriff court or the High Court, by 6 months.
- (4) The maximum penalty is increased by sub-paragraph (3) even if the penalty as so increased exceeds the penalty which it would otherwise be competent for the court to impose.
- (5) In imposing a penalty in respect of offence O, the court must state—
  - (a) where the penalty is different from that which the court would have imposed had sub-paragraph (2) not applied, the extent of and the reasons for that difference,
  - (b) otherwise, the reasons for there being no such difference.

### *Matters for paragraph 3(2)(b)*

- 4 (1) For the purpose of paragraph 3(2)(b), the matters are—
  - (a) the number of offences in connection with which the person was subject to investigative liberation conditions when offence O was committed,
  - (b) any previous conviction the person has for an offence under paragraph 1(1)(a),
  - (c) the extent to which the sentence or disposal in respect of any previous conviction differed, by virtue of paragraph 3(2), from that which the court would have imposed but for that paragraph.
- (2) In sub-paragraph (1)—
  - (a) in paragraph (b), the reference to any previous conviction 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) for an offence that is equivalent to an offence under paragraph 1(1)(a),
  - (b) in paragraph (c), the references to paragraph 3(2) are to be read, in relation to a previous conviction by a court referred to in paragraph (a) of this sub-paragraph, as references to any provision that is equivalent to paragraph 3(2).
- (3) Any issue of equivalence arising under sub-paragraph (2)(a) or (b) is for the court to determine.

### *Matters for paragraph 3(2)(c)*

- 5 (1) For the purpose of paragraph 3(2)(c), the matters are—
  - (a) the number of undertakings to which the person was subject when offence O was committed,
  - (b) any previous conviction the person has for an offence under paragraph 1(1)(c),
  - (c) the extent to which the sentence or disposal in respect of any previous conviction differed, by virtue of paragraph 3(2), from that which the court would have imposed but for that paragraph.
- (2) In sub-paragraph (1)—
  - (a) in paragraph (b), the reference to any previous conviction 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) for an offence that is equivalent to an offence under paragraph 1(1)(c),

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- (b) in paragraph (c), the references to paragraph 3(2) are to be read, in relation to a previous conviction by a court referred to in paragraph (a) of this sub-paragraph, as references to any provision that is equivalent to paragraph 3(2).
- (3) Any issue of equivalence arising under sub-paragraph (2)(a) or (b) is for the court to determine.

### *Evidential presumptions*

- 6 (1) In any proceedings in relation to an offence under paragraph 1(1), the facts mentioned in sub-paragraph (2) are to be held as admitted unless challenged by preliminary objection before the person's plea is recorded.
- (2) The facts are—
  - (a) that the person breached an undertaking by reason of failing to appear at court as required by the terms of the undertaking,
  - (b) that the person was subject to a particular—
    - (i) investigative liberation condition, or
    - (ii) condition under the terms of an undertaking.
- (3) In proceedings to which sub-paragraph (4) applies—
  - (a) something in writing, purporting to impose investigative liberation conditions and bearing to be signed by a constable, is sufficient evidence of the terms of the investigative liberation conditions imposed under section 14(2),
  - (b) something in writing, purporting to be an undertaking and bearing to be signed by the person said to have given it, is sufficient evidence of the terms of the undertaking at the time that it was given,
  - (c) a document purporting to be a notice (or a copy of a notice) under section 16 or 21, is sufficient evidence of the terms of the notice.
- (4) This sub-paragraph applies to proceedings—
  - (a) in relation to an offence under paragraph 1(1), or
  - (b) in which the fact mentioned in paragraph 3(1)(b) is specified in the complaint or indictment.
- (5) In proceedings in which the fact mentioned in paragraph 3(1)(b) is specified in the complaint or indictment, that fact is to be held as admitted unless challenged—
  - (a) in summary proceedings, by preliminary objection before the person's plea is recorded, or
  - (b) in the case of proceedings on indictment, by giving notice of a preliminary objection in accordance with section 71(2) or 72(6)(b)(i) of the 1995 Act.

### *Interpretation*

- 7 In this schedule—
  - (a) references to an investigative liberation condition are to a condition imposed under section 14(2) or 17(3)(b) subject to any modification by notice under section 16(1) or (5)(a),
  - (b) references to an undertaking are to an undertaking given under section 19(2)(a),

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- (c) references to the terms of an undertaking are to the terms of an undertaking subject to any modification by—
  - (i) notice under section 21(1), or
  - (ii) the sheriff under section 22(3)(b).>

### **Michael Matheson**

**198** Leave out section 43

### **Michael Matheson**

**199** Leave out section 44

### **Michael Matheson**

**200** Leave out section 45

### **Michael Matheson**

**201** Leave out section 46

### **Michael Matheson**

**202** Leave out section 47

### **Michael Matheson**

**203** Leave out section 48

### **Michael Matheson**

**204** Leave out section 49

## **Requirement to bring officially accused person before court as soon as practicable**

### **Michael Matheson**

**149** In section 18, page 9, line 1, leave out subsection (2) and insert—

- <(2) The person must be brought before a court (unless released from custody under section 19)—
  - (a) if practicable, before the end of the first day on which the court is sitting after the day on which this subsection began to apply to the person, or
  - (b) as soon as practicable after that.>

## **Duties of police in relation to under 18s**

### **Michael Matheson**

**150** After section 18, insert—

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### <Under 18s to be kept in place of safety prior to court

- (1) Subsection (2) applies when—
  - (a) a person is to be brought before a court in accordance with section 18(2), and
  - (b) either—
    - (i) a constable believes the person is under 16 years of age, or
    - (ii) the person is subject to a compulsory supervision order, or an interim compulsory supervision order, made under the Children’s Hearings (Scotland) Act 2011.
- (2) The person must (unless released from custody under section 19) be kept in a place of safety until the person can be brought before the court.
- (3) The place of safety in which the person is kept must not be a police station unless an appropriate constable certifies that keeping the person in a place of safety other than a police station would be—
  - (a) impracticable,
  - (b) unsafe, or
  - (c) inadvisable due to the person’s state of health (physical or mental).
- (4) A certificate under subsection (3) must be produced to the court when the person is brought before it.
- (5) In this section—

“an appropriate constable” means a constable of the rank of inspector or above,  
“place of safety” has the meaning given in section 202(1) of the Children’s Hearings (Scotland) Act 2011.>

### John Finnie

**150A** As an amendment to amendment 150, line 21, leave out <inspector> and insert <superintendent>

### Michael Matheson

**151** After section 18, insert—

#### <Notice to parent that under 18 to be brought before court

- (1) Subsection (2) applies when a person who is 16 years of age or over and subject to a supervision order or under 16 years of age—
  - (a) is to be brought before a court in accordance with section 18(2), or
  - (b) is released from police custody on an undertaking given under section 19(2)(a).
- (2) A parent of the person mentioned in subsection (1) (if one can be found) must be informed of the following matters—
  - (a) the court before which the person is to be brought,
  - (b) the date on which the person is to be brought before the court,
  - (c) the general nature of the offence which the person has been officially accused of committing, and
  - (d) that the parent’s attendance at the court may be required under section 42 of the 1995 Act.

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- (3) Subsection (2) does not require any information to be given to a parent if a constable has grounds to believe that giving the parent the information mentioned in that subsection may be detrimental to the wellbeing of the person mentioned in subsection (1).
- (4) In this section—
  - “parent” includes guardian and any person who has the care of the person mentioned in subsection (1),
  - “supervision order” means compulsory supervision order, or interim compulsory supervision order, made under the Children’s Hearings (Scotland) Act 2011.>

### Michael Matheson

152 After section 18, insert—

#### <Notice to local authority that under 18 to be brought before court

- (1) The appropriate local authority must be informed of the matters mentioned in subsection (4) when—
  - (a) a person to whom either subsection (2) or (3) applies is to be brought before a court in accordance with section 18(2), or
  - (b) a person to whom subsection (2) applies is released from police custody on an undertaking given under section 19(2)(a).
- (2) This subsection applies to—
  - (a) a person who is under 16 years of age,
  - (b) a person who is—
    - (i) 16 or 17 years of age, and
    - (ii) subject to a compulsory supervision order, or an interim compulsory supervision order, made under the Children’s Hearings (Scotland) Act 2011.
- (3) This subsection applies to a person if—
  - (a) a constable believes the person is 16 or 17 years of age,
  - (b) since being arrested, the person has not exercised the right to have intimation sent under section 30, and
  - (c) on being informed or reminded of the right to have intimation sent under that section after being officially accused, the person has declined to exercise the right.
- (4) The matters referred to in subsection (1) are—
  - (a) the court before which the person mentioned in paragraph (a) or (as the case may be) (b) of that subsection is to be brought,
  - (b) the date on which the person is to be brought before the court, and
  - (c) the general nature of the offence which the person has been officially accused of committing.
- (5) For the purpose of subsection (1), the appropriate local authority is the local authority in whose area the court referred to in subsection (4)(a) sits.>

### Elaine Murray

65 In section 42, page 20, line 25, leave out <well-being> and insert <best interests>

## THIS IS NOT THE MARSHALLED LIST

### Alison McInnes

255 In section 42, page 20, line 25, at end insert—

- <( ) A decision under subsection (1)(b) or (c) must be exercised for the shortest possible period of time.>

### Michael Matheson

196 After section 42, insert—

#### <Duties in relation to children in custody

- (1) A child who is in police custody at a police station is, so far as practicable, to be prevented from associating with any adult who is officially accused of committing an offence other than an adult to whom subsection (2) applies.
- (2) This subsection applies to an adult if a constable believes that it may be detrimental to the wellbeing of the child mentioned in subsection (1) to prevent the child and adult from associating with one another.
- (3) For the purposes of this section—
  - “child” means person who is under 18 years of age,
  - “adult” means person who is 18 years of age or over.>

### Michael Matheson

197 After section 42, insert—

#### <Duty to inform Principal Reporter if child not being prosecuted

- (1) Subsections (2) and (3) apply if—
  - (a) a person is being kept in a place of safety in accordance with section (*Under 18s to be kept in place of safety prior to court*)(2) when it is decided not to prosecute the person for any relevant offence, and
  - (b) a constable has reasonable grounds for suspecting that the person has committed a relevant offence.
- (2) The Principal Reporter must be informed, as soon as reasonably practicable, that the person is being kept in a place of safety under subsection (3).
- (3) The person must be kept in a place of safety under this subsection until the Principal Reporter makes a direction under section 65(2) of the Children’s Hearings (Scotland) Act 2011.
- (4) An offence is a “relevant offence” for the purpose of subsection (1) if—
  - (a) it is the offence with which the person was officially accused, leading to the person being kept in the place of safety in accordance with section (*Under 18s to be kept in place of safety prior to court*)(2), or
  - (b) it is an offence arising from the same circumstances as the offence mentioned in paragraph (a).
- (5) In this section, “place of safety” has the meaning given in section 202(1) of the Children’s Hearings (Scotland) Act 2011.>



## THIS IS NOT THE MARSHALLED LIST

### Michael Matheson

- 222 In section 56, page 25, line 15, leave out from <if> to end of line 18 and insert <from the time the person is arrested by a constable until any one of the events mentioned in subsection (2) occurs.
- (2) The events are—
- (a) the person is released from custody,
  - (b) the person is brought before a court in accordance with section 18(2),
  - (c) the Principal Reporter makes a direction under section 65(2)(b) of the Children's Hearings (Scotland) Act 2011 that the person continue to be kept in a place of safety.>

### Release on undertaking

### Michael Matheson

- 153 In section 19, page 9, line 20, at end insert—
- <( ) Where a person is in custody as mentioned in subsection (1)(a), the person may not be released from custody under subsection (2)(b).>

### Michael Matheson

- 154 In section 20, page 9, line 28, at end insert <while subject to the undertaking>

### Michael Matheson

- 155 In section 20, page 9, line 30, leave out from <commit> to end of line 33 and insert—
- <(i) commit an offence,
  - (ii) interfere with witnesses or evidence, or otherwise obstruct the course of justice,
  - (iii) behave in a manner which causes, or is likely to cause, alarm or distress to witnesses,
- (b) any further condition that a constable considers necessary and proportionate for the purpose of ensuring that any conditions imposed under paragraph (a) are observed.>

### Elaine Murray

- 48 In section 20, page 9, line 32, leave out from <ensuring> to end of line 33 and insert <securing—
- (i) that the person surrenders to custody if required to do so,
  - (ii) that the person does not interfere with a witness or otherwise obstruct the course of the investigation into the offence in connection with which the person is in police custody,
  - (iii) the protection of the person, or
  - (iv) if the person is under 18 years of age, the welfare or interests of the person.>

**THIS IS NOT THE MARSHALLED LIST**

**Michael Matheson**

- 156** In section 20, page 9, line 34, leave out <a curfew> and insert—
- <(a) a condition requiring the person—
    - (i) to be in a specified place at a specified time, and
    - (ii) to remain there for a specified period,
  - (b) a condition requiring the person—
    - (i) not to be in a specified place, or category of place, at a specified time, and
    - (ii) to remain outwith that place, or any place falling within the specified category (if any), for a specified period>

**Michael Matheson**

- 157** In section 20, page 9, line 35, leave out subsection (5) and insert—
- <(5) For the imposition of a condition under subsection (3)(b)—
    - (a) if it is of the kind described in subsection (4)(a), the authority of a constable of the rank of inspector or above is required,
    - (b) if it is of any other kind, the authority of a constable of the rank of sergeant is required.>

**Michael Matheson**

- 160** In section 21, page 10, line 11, leave out subsection (3)

**Michael Matheson**

- 161** In section 21, page 10, line 13, leave out subsection (4)

**Michael Matheson**

- 162** In section 21, page 10, line 22, leave out <or (3)>

**Michael Matheson**

- 163** After section 21, insert—
- <Rescission of undertaking**
- (1) The procurator fiscal may by notice rescind an undertaking given under section 19(2)(a) (whether or not the person who gave it is to be prosecuted).
  - (2) The rescission of an undertaking by virtue of subsection (1) takes effect at the end of the day on which the notice is sent.
  - (3) Notice under subsection (1) must be effected in a manner by which citation may be effected under section 141 of the 1995 Act.
  - (4) A constable may arrest a person without a warrant if the constable has reasonable grounds for suspecting that the person is likely to fail to comply with the terms of an undertaking given under section 19(2)(a).
  - (5) Where a person is arrested under subsection (4) or subsection (6) applies—
    - (a) the undertaking referred to in subsection (4) or (as the case may be) (6) is rescinded, and

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- (b) this Part applies as if the person, since being most recently arrested, has been charged with the offence in connection with which the person was in police custody when the undertaking was given.
- (6) This subsection applies where—
  - (a) a person who is subject to an undertaking given under section 19(2)(a) is in police custody (otherwise than as a result of having been arrested under subsection (4)), and
  - (b) a constable has reasonable grounds for suspecting that the person has failed, or (if liberated) is likely to fail, to comply with the terms of the undertaking.
- (7) The references in subsections (4) and (6)(b) to the terms of the undertaking are to the terms of the undertaking subject to any modification by—
  - (a) notice under section 21(1), or
  - (b) the sheriff under section 22(3)(b).>

### **Michael Matheson**

**164** After section 21, insert—

#### **<Expiry of undertaking**

- (1) An undertaking given under section 19(2)(a) expires—
  - (a) at the end of the day on which the person who gave it is required by its terms to appear at a court, or
  - (b) if subsection (2) applies, at the end of the day on which the person who gave it is brought before a court having been arrested under the warrant mentioned in that subsection.
- (2) This subsection applies where—
  - (a) a person fails to appear at court as required by the terms of an undertaking given under section 19(2)(a), and
  - (b) on account of that failure, a warrant for the person's arrest is granted.
- (3) The references in subsections (1)(a) and (2)(a) to the terms of the undertaking are to the terms of the undertaking subject to any modification by notice under section 21(1).>

### **Provision of information prior to interview**

#### **John Finnie**

**28** In section 23, page 11, line 10, after <committing> insert <and again immediately before the interview commences>

#### **Michael Matheson**

**165** In section 23, page 11, line 11, at end insert—

<( ) of the general nature of that offence.>

#### **Michael Matheson**

**166** In section 23, page 11, line 24, at end insert—

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- <( ) Where a person is to be interviewed by virtue of authorisation granted under section 27, before the interview begins the person must be informed of what was specified by the court under subsection (6) of that section.>

**Circumstances in which interview may take place without solicitor present or in which sending of intimation or consultation with solicitor may be delayed**

**John Finnie**

- 29 In section 24, page 12, line 2, leave out from <if> to end of line 5

**Alison McInnes**

- 243 In section 24, page 12, line 2, leave out second <the> and insert <an appropriate>

**Alison McInnes**

- 244 In section 24, page 12, line 3, leave out from <in> to end of line 5 and insert <as a result of an urgent need to prevent—
- (a) interference with evidence in connection with the offence under consideration, or
  - (b) interference with or physical harm to a person.>

**Alison McInnes**

- 245 In section 24, page 12, line 13, at end insert—
- <( ) In this section, “appropriate constable” means a constable who—
- (a) is of the rank of superintendent or above, and
  - (b) has not been involved in the investigation in connection with which the person is in police custody.>

**Alison McInnes**

- 246 In section 30, page 16, line 19, leave out <a> and insert <an appropriate>

**Alison McInnes**

- 247 In section 30, page 16, line 22, at end insert—
- <( ) In this section and section 32, “appropriate constable” means a constable who—
- (a) is of the rank of inspector or above, and
  - (b) has not been involved in the investigation in connection with which the person is in police custody.>

**Alison McInnes**

- 248 In section 32, page 17, line 29, after <as> insert <an appropriate constable considers that>

**Alison McInnes**

- 250 In section 36, page 19, line 12, leave out <a> and insert <an appropriate>

**THIS IS NOT THE MARSHALLED LIST**

**Alison McInnes**

- 251 In section 36, page 19, line 13, leave out from <in> to end of line 15 and insert <as a result of an urgent need to prevent—
- (a) interference with evidence in connection with the offence under consideration, or
  - (b) interference with, or physical harm to, a person.>

**Alison McInnes**

- 253 In section 36, page 19, line 18, at end insert—
- <( ) In subsection (2), “appropriate constable” means a constable who—
- (a) is of the rank of superintendent or above, and
  - (b) has not been involved in the investigation in connection with which the person is in police custody.>

**Rights of under 18s: consent to interview without solicitor present, sending of intimation and access to other person, other support**

**Elaine Murray**

- 55 In section 25, page 12, line 15, leave out <Subsections (2) and (3) apply> and insert <Subsection (2) applies>

**Elaine Murray**

**Supported by: Alison McInnes**

- 56 In section 25, page 12, line 17, leave out <16> and insert <18>

**Michael Matheson**

- 167 In section 25, page 12, line 17, after <age,> insert—
- <(aa) the person is 16 or 17 years of age and subject to a compulsory supervision order, or an interim compulsory supervision order, made under the Children’s Hearings (Scotland) Act 2011,>

**Elaine Murray**

**Supported by: Alison McInnes**

- 57 In section 25, page 12, line 18, leave out <16> and insert <18>

**Elaine Murray**

- 58 In section 25, page 12, line 22, leave out subsections (3) to (5)

**Michael Matheson**

- 168 In section 25, page 12, line 27, leave out <(2)(b)> and insert <(2)(aa) or (b)>

**Elaine Murray**

- 59 In section 30, page 16, line 9, leave out <16> and insert <18>

**THIS IS NOT THE MARSHALLED LIST**

**Elaine Murray**

60 In section 30, page 16, line 13, leave out <16> and insert <18>

**Michael Matheson**

173 In section 31, page 16, line 31, at end insert—

<( ) Subsection (2) does not apply if—

(a) a constable believes that the person in custody is 16 or 17 years of age, and

(b) the person in custody requests that the person to whom intimation is to be sent under section 30(1) is not asked to attend at the place where the person in custody is being held.>

**Elaine Murray**

61 In section 31, page 17, line 2, leave out from second <or> to end of line 5

**Elaine Murray**

62 In section 32, page 17, line 17, leave out <16> and insert <18>

**Elaine Murray**

63 In section 32, page 17, line 23, leave out subsection (2)

**Elaine Murray**

64 In section 32, page 17, line 28, leave out <or (2)>

**John Pentland**

38 In section 33, page 18, line 1, leave out from beginning to <over,>

**Elaine Murray**

32 In section 33, page 18, line 1, leave out <18> and insert <16>

**Vulnerable persons: consent to interview without solicitor present, support etc.**

**John Finnie**

30 In section 25, page 12, line 18, leave out <, owing to mental disorder,>

**John Finnie**

31 In section 25, page 12, leave out lines 36 and 37

**Michael Matheson**

169 In section 25, page 12, line 36, leave out <328(1)> and insert <328>

**John Finnie**

33 In section 33, page 18, line 2, leave out <owing to mental disorder,>

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### Michael Matheson

- 189 In section 33, page 18, line 3, leave out <to> and insert—  
<( )>

### John Finnie

- 34 In section 33, page 18, leave out lines 17 and 18

### Michael Matheson

- 190 In section 33, page 18, line 17, leave out <328(1)> and insert <328>

### Alison McInnes

- 249 Leave out section 34 and insert—

#### <Provision of appropriate adults

Each local authority must ensure the provision of persons who may for the purposes of subsection (2) of section 33 be considered suitable to provide support of the sort mentioned in subsection 3 of that section (including as to training, qualifications and experience).>

### Michael Matheson

- 191 Leave out section 34

### Michael Matheson

- 220 After section 53, insert—

#### <Further provision about vulnerable persons

- (1) The Scottish Ministers may by regulations—
- (a) amend subsections (2)(b) and (6) of section 25,
  - (b) amend subsections (1)(c), (3) and (5) of section 33,
  - (c) specify descriptions of persons who may for the purposes of subsection (2) of section 33 be considered suitable to provide support of the sort mentioned in subsection (3) of that section (including as to training, qualifications and experience).
- (2) Regulations under subsection (1) are subject to the affirmative procedure.>

### Rights of under 18s: minor amendments

### Michael Matheson

- 172 In section 30, page 16, line 25, leave out <a person> and insert <the person in custody>

### Michael Matheson

- 174 In section 31, page 16, line 32, leave out <Subsection (4) applies> and insert <Subsections (3A) and (4) apply>

## THIS IS NOT THE MARSHALLED LIST

### **Michael Matheson**

- 175 In section 31, page 16, leave out lines 35 and 36 and insert—  
<(b) the person to whom intimation is sent by virtue of section 30(3), if asked to attend at the place where the person in custody is being held, claims to be unable or unwilling to attend within a reasonable time.>

### **Michael Matheson**

- 177 In section 31, page 16, line 36, at end insert—  
<(3A) Section 30(3) ceases to have effect.>

### **Michael Matheson**

- 178 In section 31, page 16, line 37, after <intimation> insert <to an appropriate person>

### **Michael Matheson**

- 179 In section 31, page 17, line 6, leave out <(4)(a)> and insert <(4)>

### **Michael Matheson**

- 182 In section 32, page 17, line 20, leave out <at least one> and insert <a>

### **Michael Matheson**

- 183 In section 32, page 17, line 21, leave out from <who> to end of line 22

### **Michael Matheson**

- 184 In section 32, page 17, line 24, leave out <at least one> and insert <a>

### **Michael Matheson**

- 185 In section 32, page 17, leave out line 26

### **Michael Matheson**

- 186 In section 32, page 17, line 27, at end insert—  
<( ) Access to a person in custody under subsection (1) or (2) need not be permitted to more than one person at the same time.>

### **Michael Matheson**

- 187 In section 32, page 17, line 34, leave out <a person> and insert <the person in custody>

### **Means of consultation with solicitor**

#### **Alison McInnes**

- 252 In section 36, page 19, line 16, leave out from second <consultation> to <example> in line 17 and insert <, except in exceptional circumstances, consultation in person but may include initial>

#### **Michael Matheson**

- 192 In section 36, page 19, line 16, leave out second <means> and insert <method>



## THIS IS NOT THE MARSHALLED LIST

**Michael Matheson**

193 In section 36, page 19, line 17, leave out <means of>

### **Powers in relation to biometric information**

**Alison McInnes**

254 After section 40, insert—

#### **<Powers in relation to biometric information**

- (1) Section 18 (prints, samples etc. in criminal investigations) of the 1995 Act is amended as follows.
- (2) After subsection (7A)(d) there is inserted—
  - “(e) other biometric information.”.
- (3) After subsection (7B) there is inserted—
  - “(7C) In subsection (7A)(e) “biometric information” means any information (in any form and produced and stored by any method) about a person’s physical or behavioural characteristics or features which—
    - (a) is capable of being used in order to establish or verify the identity of the person, and
    - (b) is obtained or recorded with the intention that it be used for the purposes of a biometric recognition system.
  - (7D) Biometric information may, in particular, include images or recordings of or information about—
    - (a) the features of an iris or any other part of the eye,
    - (b) the features of any other part of the face,
    - (c) a person’s voice, handwriting or gait.
  - (7E) In subsection (7C) “biometric recognition system” means a system which, by means of equipment operating automatically—
    - (a) obtains or records information about a person’s physical or behavioural characteristics or features, and
    - (b) compares the information with stored information that has previously been so obtained or recorded, or otherwise processes the information, for the purpose of establishing or verifying the identity of the person, or otherwise determining whether the person is recognised by the system.
  - (7F) The Scottish Ministers may by regulations subject to the affirmative procedure modify subsection (7D) by—
    - (a) adding a physical or behavioural characteristic or feature to, or removing such a characteristic or feature from, that subsection, or included in that subsection.”.>

## THIS IS NOT THE MARSHALLED LIST

### Care of drunken persons

Michael Matheson

195 After section 40, insert—

*<Care of drunken persons*

#### **Taking drunk persons to designated place**

- (1) Where—
  - (a) a person is liable to be arrested in respect of an offence by a constable without a warrant, and
  - (b) the constable is of the opinion that the person is drunk,the constable may take the person to a designated place (and do so instead of arresting the person).
- (2) Nothing done under subsection (1)—
  - (a) makes a person liable to be held unwillingly at a designated place, or
  - (b) prevents a constable from arresting the person in respect of the offence referred to in that subsection.
- (3) In this section, “designated place” is any place designated by the Scottish Ministers for the purpose of this section as a place suitable for the care of drunken persons.>

### Disclosure of information relating to persons not officially accused

Elaine Murray

35 After section 42, insert—

#### **<Duty not to disclose information relating to person not officially accused**

- (1) Subject to section (*Disclosure of information: person released under section 14*), a constable must not without reasonable cause release the information specified in subsection (2) to any person other than an authorised person.
- (2) The information is information relating to a person not officially accused of an offence which—
  - (a) identifies that person, or
  - (b) is likely to be sufficient to allow that person to be identified, as having been arrested in connection with an offence.
- (3) For the purposes of subsection (1), an “authorised person” means—
  - (a) a constable,
  - (b) a person to whom intimation must or may be sent under Chapter 5 of this Part,
  - (c) a person other than a constable to whom the information must be disclosed for the purpose of ensuring the proper conduct of the investigation into the offence.
- (4) For the purposes of subsection (1), a determination that there is reasonable cause to disclose information must be made—

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- (a) only if it is in the public interest to do so, and
- (b) by a constable who is of the rank of inspector or above.>

### Elaine Murray

36 After section 42, insert—

#### <Disclosure of information: person released under section 14

- (1) Without prejudice to the generality of section (*Duty not to disclose information relating to person not officially accused*), a constable may disclose qualifying information relating to an alleged offence to a person mentioned in subsection (2) where the conditions in subsection (3) are met.
- (2) The persons are—
  - (a) a person—
    - (i) against whom, or
    - (ii) against whose property,  
the acts which constituted the alleged offence were directed,
  - (b) in the case where the death of a person mentioned in paragraph (a) was (or appears to have been) caused by the alleged offence, a prescribed relative of the person,
  - (c) a person who is likely to give evidence in criminal proceedings which are likely to be instituted against a person in respect of the alleged offence,
  - (d) a person who has given a statement in relation to the alleged offence to a constable.
- (3) The conditions are that disclosure of the information —
  - (a) is in the public interest or is otherwise likely to promote the safety and wellbeing of a person mentioned in subsection (2), and
  - (b) is authorised by a constable who is of the rank of inspector or above.
- (4) In this section—
  - “prescribed” means prescribed by the Scottish Ministers by order subject to the negative procedure,
  - “qualifying information” means information that—
    - (a) identifies a person as having been arrested in connection with an alleged offence and subsequently released under section 14, and
    - (b) sets out such information relating to any conditions imposed on the person under section 14(2) as the constable authorising the disclosure considers appropriate.
- (5) The Scottish Ministers may, by order subject to the negative procedure, modify the definition of “qualifying information” in subsection (4).>

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### Modification of enactments in connection with Part 1

#### **Michael Matheson**

- 206** In schedule 1, page 44, line 28, at end insert—  
<( ) in subsection (3), for the words “he can be delivered into the custody” there is substituted “the arrival”,>

#### **Michael Matheson**

- 207** In schedule 1, page 45, line 30, at end insert—  
<In each of sections 169(2) and 170(2) of the Children’s Hearings (Scotland) Act 2011, the words “arrested without warrant and” are repealed.>

#### **Michael Matheson**

- 208** In schedule 1, page 46, line 2, leave out from <15A> to end of line 3 and insert <17A,>

#### **Michael Matheson**

- 209** In schedule 1, page 46, line 4, leave out <cross-heading> and insert <heading>

#### **Michael Matheson**

- 210** In schedule 1, page 46, line 5, at end insert—  
<( ) section 43,>

#### **Michael Matheson**

- 211** In schedule 1, page 46, line 6, at end insert—  
<(1) In section 18—  
(a) in subsection (1), the words “or is detained under section 14(1) of this Act” are repealed,  
(b) in subsection (2), the words “or detained” are repealed.  
(2) In subsection (2)(a) of section 18B, for the words “under arrest or being detained” there is substituted “in custody”.  
(3) In section 18D—  
(a) in subsection (2)(a), the words “or detained” are repealed,  
(b) in subsection (2)(b), for the words “under arrest or being detained” there is substituted “in custody”.  
(4) In subsection (8)(b) of section 19AA, the words “or detention under section 14(1) of this Act” are repealed.>

#### **Michael Matheson**

- 212** In schedule 1, page 46, line 6, at end insert—  
<In section 42—  
(a) subsection (3) is repealed,  
(b) subsection (7) is repealed,

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- (c) in subsection (8), for the words “subsection (7) above” there is substituted “section (*Notice to local authority that under 18 to be brought before court*) of the Criminal Justice (Scotland) Act 2015”,
- (d) in subsection (9), the words “detained in a police station, or” are repealed,
- (e) subsection (10) is repealed.>

### Michael Matheson

213 In schedule 1, page 46, line 31, at end insert—

<In section 6D of the Road Traffic Act 1988, for subsection (2A) there is substituted—

“(2A) Instead of, or before, arresting a person under this section, a constable may detain the person at or near the place where the preliminary test was, or would have been, administered with a view to imposing on the person there a requirement under section 7.”.>

### Michael Matheson

215 In schedule 1, page 46, line 31, at end insert—

<In the schedule to the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002, paragraph 2 is repealed.>

### Michael Matheson

216 In schedule 1, page 46, line 33, at end insert—

<In the Children’s Hearings (Scotland) Act 2011—

(a) in section 65—

(i) for subsection (1) there is substituted—

“(1) Subsection (2) applies where the Principal Reporter is informed under subsection (2) of section (*Duty to inform Principal Reporter if child not being prosecuted*) of the Criminal Justice (Scotland) Act 2015 that a child is being kept in a place of safety under subsection (3) of that section.”,

(ii) in subsection (2), for the words “in the” there is substituted “in a”,

(b) in section 66(1), for sub-paragraph (vii) there is substituted—

“(vii) information under section (*Duty to inform Principal Reporter if child not being prosecuted*) of the Criminal Justice (Scotland) Act 2015, or”,

(c) in section 68(4)(e)(vi), for the words “section 43(5) of the Criminal Procedure (Scotland) Act 1995 (c.46)” there is substituted “section (*Duty to inform Principal Reporter if child not being prosecuted*) of the Criminal Justice (Scotland) Act 2015”,

(d) in section 69, for subsection (3) there is substituted—

“(3) If—

(a) the determination under section 66(2) is made following the Principal Reporter receiving information under section (*Duty to inform Principal Reporter if child not being prosecuted*) of the Criminal Justice (Scotland) Act 2015, and

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(b) at the time the determination is made the child is being kept in a place of safety,

the children’s hearing must be arranged to take place no later than the third day after the Principal Reporter receives the information mentioned in paragraph (a).”,

(e) in section 72(2)(b), for the words “in the” there is substituted “in a”.>

### **Application of Part 1 in relation to arrests under other enactments**

#### **Michael Matheson**

**214** In schedule 1, page 46, line 31, at end insert—

<In Schedule 8 to the Terrorism Act 2000—

(a) in paragraph 18—

(i) in sub-paragraph (2), for the words from “and” at the end of paragraph (a) to the end of the sub-paragraph there is substituted—

“(ab) intimation is to be made under paragraph 16(1) whether the person detained requests that it be made or not, and

(ac) section 32 (right of under 18s to have access to other person) of the Criminal Justice (Scotland) Act 2015 applies as if the detained person were a person in police custody for the purposes of that section.”,

(ii) after sub-paragraph (3) there is inserted—

“(4) For the purposes of sub-paragraph (2)—

“child” means a person under 16 years of age,

“parent” includes guardian and any person who has the care of the child mentioned in sub-paragraph (2).”,

(b) in paragraph 20(1), the words “or a person detained under section 14 of that Act” are repealed,

(c) in paragraph 27—

(i) in sub-paragraph (4), paragraph (a) is repealed,

(ii) sub-paragraph (5) is repealed.>

#### **Michael Matheson**

**217** Before section 53, insert—

#### **<Disapplication in relation to service offences**

(1) References in this Part to an offence do not include a service offence.

(2) Nothing in this Part applies in relation to a person who is arrested in respect of a service offence.

(3) In this section, “service offence” has the meaning given by section 50(2) of the Armed Forces Act 2006.>

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### Michael Matheson

218 In section 53, page 25, line 4, at end insert—

<( ) Subsection (1) is subject to paragraph 18 of Schedule 8 to the Terrorism Act 2000.>

### Michael Matheson

219 After section 53, insert—

#### *<Powers to modify Part*

#### **Further provision about application of Part**

- (1) The Scottish Ministers may by regulations modify this Part to provide that some or all of it—
  - (a) applies in relation to persons to whom it would otherwise not apply because of—
    - (i) section (*Disapplication in relation to service offences*), or
    - (ii) section 53,
  - (b) does not apply in relation to persons arrested otherwise than in respect of an offence.
- (2) The Scottish Ministers may by regulations make such modifications to this Part as seem to them necessary or expedient in relation to its application to persons mentioned in subsection (1).
- (3) Regulations under this section may make different provision for different purposes.
- (4) Regulations under this section are subject to the affirmative procedure.>

### **Code of practice about investigative functions**

#### Alison McInnes

258 After section 52, insert—

#### *<Code of practice about investigative functions*

#### **Code of practice about investigative functions**

- (1) The Lord Advocate must issue a code of practice on—
  - (a) the questioning, and recording of questioning, of persons suspected of committing offences, and
  - (b) the conduct of identification procedures involving such persons.
- (2) The Lord Advocate—
  - (a) must keep the code of practice issued under subsection (1) under review,
  - (b) may from time to time revise the code of practice.
- (3) The code of practice is to apply to the functions exercisable by or on behalf of—
  - (a) the Police Service of Scotland,
  - (b) such other bodies as are specified in the code (being bodies responsible for reporting offences to the procurator fiscal).

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- (4) Before issuing the code of practice, the Lord Advocate must consult publicly on a draft of the code.
- (5) When preparing a draft of the code of practice for public consultation, the Lord Advocate must consult—
  - (a) the Lord Justice General,
  - (b) the Faculty of Advocates,
  - (c) the Law Society of Scotland,
  - (d) the Scottish Police Authority,
  - (e) the chief constable of the Police Service of Scotland,
  - (f) the Scottish Human Rights Commission,
  - (g) the Commissioner for Children and Young People in Scotland, and
  - (h) such other persons as the Lord Advocate considers appropriate.
- (6) The Lord Advocate must lay before the Scottish Parliament a copy of the code of practice issued under this section.
- (7) Where a court determines in criminal proceedings that evidence has been obtained in breach of the code of practice, the evidence is inadmissible in the proceedings unless the court is satisfied that admitting the evidence would not result in unfairness in the proceedings.
- (8) Breach of the code of practice does not of itself give rise to grounds for any legal claim whatsoever.
- (9) Subsections (3) to (8) apply to a revised code of practice under subsection (2)(b) as they apply to the code of practice issued under subsection (1).>



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