

Criminal Justice (Scotland) Bill

4th 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 fourth 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

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 21

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

Police powers of search

With 223 (on Day 3) – 53

Power to arrest without warrant and meaning of arrest

With 111 (on Day 3) – 37

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

With 234 (on Day 3) – 256, 257, 259

Minor and drafting amendments

With 116 (on Day 3) – 194, 205, 221

Information to be given if sexual offence

With 119 (on Day 3) – 148

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

With 120 (on Day 3) – 170, 171, 176, 180, 181, 188

Arrest and custody of person with responsibility for child

With 39 (on Day 3) – 110, 41, 42, 43, 44, 45, 260

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Amendments in debating order

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—
- <(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.

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(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>

John Finnie

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

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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
 - (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.

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- (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,
 - (ii) as respects conviction in the sheriff court or the High Court, by 6 months.

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- (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),
 - (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).

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- (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),
 - (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

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(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—

<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—

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- (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.
- (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—

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“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>

Alison McInnes

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

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<() 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.>

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—

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- (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.>

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,

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- (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
 - (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—

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- (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—

<() 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.>

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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>

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

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(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>

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—

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<() 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,>

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

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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>

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—

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<(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>

Michael Matheson

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

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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.”.>

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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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