

Criminal Justice (Scotland) Bill

1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 57 to 61	Schedule 2
Sections 62 to 87	Schedule 3
Sections 1 to 52	Schedule 1
Sections 53 to 56	Sections 88 to 91
Long Title	

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

Before section 57

Graeme Pearson

9* Before section 57, insert—

<PART

SCOTTISH CRIMINAL EVIDENCE AND PROCEDURE COMMISSION

Scottish Criminal Evidence and Procedure Commission

- (1) There is established a body to be known as the Scottish Criminal Evidence and Procedure Commission (“the Commission”).
- (2) The purpose of the Commission is to report to the Scottish Parliament by 31 December 2015 on the matters specified in subsection (3).
- (3) The matters referred to in subsection (2) are—
 - (a) to review the law relating to evidence and procedure in criminal cases in Scotland,
 - (b) to consider the need for the requirement for corroboration in criminal proceedings, and
 - (c) to consider changes to the law relating to evidence and procedure in criminal cases that would be required if the requirement for corroboration is removed.
- (4) The Commission—
 - (a) is not a servant or agent of the Crown, and
 - (b) has no status, immunity or privilege of the Crown.
- (5) Any property held by the Commission is not property of, or property held on behalf of, the Crown.
- (6) The Commission is to consist of not fewer than 5 members.
- (7) Members of the Commission are to be appointed by Her Majesty on the recommendation of the First Minister, following approval by the Scottish Parliament of the proposed nomination.
- (8) At least one third of the members must be persons who are—

- (a) members of the Faculty of Advocates, or
 - (b) solicitors who are enrolled in the roll of solicitors kept under section 7 of the Solicitors (Scotland) Act 1980,
of at least 10 years' standing.
- (9) At least one third of the members must be persons who appear to the First Minister to have practical knowledge of the rights of, and support for, victims and witnesses in criminal proceedings.
- (10) One of the members mentioned in subsection (9) is to be appointed by Her Majesty, on the recommendation of the First Minister, to chair the Commission.>

Section 57

Margaret Mitchell
Supported by: Alison McInnes

- 1 Leave out section 57

Section 58

Margaret Mitchell
Supported by: Alison McInnes

- 2 Leave out section 58

Section 59

Margaret Mitchell
Supported by: Alison McInnes

- 3 Leave out section 59

Section 60

Margaret Mitchell
Supported by: Alison McInnes

- 4 Leave out section 60

Section 61

Margaret Mitchell
Supported by: Alison McInnes

- 5 Leave out section 61

Schedule 2

Margaret Mitchell
Supported by: Alison McInnes

- 6 Leave out schedule 2

Section 62

Michael Matheson

- 66 Move section 62 to after section 85

After section 62

Alison McInnes

- 54 After section 62, insert—

<PART

AGE OF CRIMINAL RESPONSIBILITY

Age of criminal responsibility

In section 41 (age of criminal responsibility) of the 1995 Act, for the word “eight” there is substituted “12”.>

Michael McMahon

- 102 After section 62, insert—

<PART

REMOVAL OF THE NOT PROVEN VERDICT

Removal of the not proven verdict

After section 292 of the 1995 Act insert—

“Available verdicts

292A Available verdicts

There are only two verdicts available in criminal proceedings, guilty and not guilty.”.>

Section 66

Michael Matheson

- 67 In section 66, page 28, leave out lines 22 to 25

Section 70

Michael McMahon

- 103 In section 70, page 31, line 38, leave out from <the> to end of line and insert <for “subsection (2)” substitute “section 90ZA”,>

Michael McMahon

- 104 In section 70, page 32, line 11, leave out from <is> to end of line 16 and insert <must return a verdict of not guilty if it is unable to return a verdict of guilty.”.>

Michael Matheson

- 68 Leave out section 70

After section 71

Margaret Mitchell

106 After section 71, insert—

<Commission to review prisoner release arrangements

Commission to review prisoner release arrangements

- (1) The Scottish Ministers are to establish a commission for the purpose of reviewing the rules governing the release of offenders from prison (in particular any arrangements under which prisoners are automatically released at a particular point in, or after serving a specified proportion of, their sentence).
- (2) The commission to be established under subsection (1) is to consist of no fewer than six members, who are to have such experience in relation to the criminal justice system and matters to do with offenders and offending (and reoffending) behaviour as the Scottish Ministers consider appropriate.
- (3) The commission to be established under subsection (1) is to make a final report to the Scottish Parliament no later than 31 December 2016.>

After section 72

Margaret Mitchell

49 After section 72, insert—

<Release of prisoners other than life prisoners

For section 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 there is substituted—

“1 Release of prisoners other than life prisoners

- (1) This section applies to all prisoners other than life prisoners.
- (2) As soon as a prisoner has served the term of imprisonment specified in the prisoner’s sentence, the Scottish Ministers must, unless the prisoner has already been released under subsection (3) or section 3(1), release the prisoner unconditionally.
- (3) As soon as a prisoner has served five-sixths of the term of imprisonment specified in the prisoner’s sentence, the Scottish Ministers must, if recommended to do so by the Parole Board, release the prisoner on licence.”>

Section 82

Christine Grahame

7 In section 82, page 37, line 18, leave out from <for> to end of line 27 and insert <the words “, subject to section 194DA of this Act,” are repealed.>

Christine Grahame

8 In section 82, page 37, line 28, at end insert—

<() In section 194C, subsection (2) is repealed.>

After section 82

Mary Fee

107 After section 82, insert—

<PART

CHILDREN AFFECTED BY PARENTAL IMPRISONMENT

National strategy on the impact of sentencing on children affected by parental imprisonment

- (1) The Scottish Ministers must, before the end of the period of one year beginning with the day of Royal Assent, lay before the Parliament draft regulations making provision for the development and implementation of a national strategy focusing on—
 - (a) the use of child and family impact assessments,
 - (b) the types of custodial and non-custodial sentences which should be considered by the courts where a person who is responsible for a child has been convicted of an offence,
 - (c) the appropriateness and effectiveness of different types of custodial and non-custodial sentences which could be imposed where a person who is responsible for a child has been convicted of an offence, and
 - (d) the impact of custodial sentences on children affected by parental imprisonment.
- (2) Regulations under subsection (1) are subject to the affirmative procedure.
- (3) Before laying draft regulations before the Parliament, the Scottish Ministers must consult—
 - (a) local authorities,
 - (b) the Scottish Police Authority,
 - (c) Health Boards,
 - (d) children and families affected by parental imprisonment,
 - (e) organisations working for and on behalf of children,
 - (f) organisations working for and on behalf of—
 - (i) prisoners,
 - (ii) children and families affected by parental imprisonment, and
 - (g) such other persons as they consider appropriate.
- (4) For the purposes of such a consultation, the Scottish Ministers must—
 - (a) lay a copy of the proposed draft regulations before the Parliament,
 - (b) publish in such manner as the Scottish Ministers consider appropriate a copy of the proposed draft regulations, and
 - (c) have regard to any representations about the proposed draft regulations that are made to them within 60 days of the date on which the copy of the proposed draft regulations is laid before the Parliament.
- (5) In calculating any period of 60 days for the purposes of subsection (4)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.

- (6) When laying regulations before the Parliament under subsection (1), the Scottish Ministers must also lay before the Parliament an explanatory document giving details of—
- (a) the consultation carried out under subsection (3),
 - (b) any representations received as a result of the consultation, and
 - (c) the changes (if any) made to the proposed draft regulations as a result of those representations.
- (7) In this Part—
- “child” means a person who has not attained the age of 18 years,
- “Health Board” means a board constituted by an order under section 2(1)(a) of the National Health Service (Scotland) Act 1978.
- (8) In this Part—
- (a) references to children affected by parental imprisonment are references to children, a person with responsibility for whom has been—
 - (i) remanded in custody awaiting trial,
 - (ii) found by a court to have committed an offence punishable with imprisonment and has been remanded in custody awaiting sentence, or
 - (iii) sentenced to a term of imprisonment or other detention,
 - (b) references to a person with responsibility for a child are references to—
 - (i) a person who has parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to a child,
 - (ii) a person who—
 - (A) is otherwise legally liable to maintain a child, or
 - (B) has care of a child.>

Mary Fee

108 After section 82, insert—

<Annual report: sentencing and the impact of parental imprisonment

- (1) The Scottish Ministers must, as soon as practicable after the end of each reporting period, lay before the Parliament a report outlining, in respect of the reporting year to which it relates—
- (a) the total number of people who have responsibility for a child who have been remanded in custody or sentenced to a term of imprisonment or other detention,
 - (b) the total number of people who have responsibility for a child who have been convicted of an offence and sentenced to a non-custodial sentence,
 - (c) the total number of child and family impact assessments undertaken where people who have responsibility for a child have been remanded in custody or were sentenced to a term of imprisonment or other detention, and
 - (d) confirmation of the total number of children who, following a child and family impact assessment being undertaken, required a child’s plan under section 33 of the Children and Young People (Scotland) Act 2014.

- (2) The Scottish Ministers must, as soon as practicable after laying a report under subsection (1) before the Parliament, publish the report in such manner as they consider appropriate.
- (3) In this section, “reporting year” means each period of one year beginning on 1 April, with the first such period beginning on the 1 April first occurring after Royal Assent.>

Mary Fee

109 After section 82, insert—

<Duty to undertake a child and family impact assessment

- (1) Subsection (2) applies where a person who has responsibility for a child—
 - (a) has been remanded in custody awaiting trial,
 - (b) has been found by a court to have committed an offence punishable with imprisonment and has been remanded in custody awaiting sentence, or
 - (c) has been sentenced to a term of imprisonment or other detention.
- (2) The court must ensure that an assessment (a “child and family impact assessment”) is carried out to determine the likely impact of the imprisonment or other detention on the wellbeing of the child, and to identify any support and assistance which will be necessary to meet the child’s wellbeing needs.
- (3) A child and family impact assessment must be undertaken as soon as reasonably practicable after the period of imprisonment or other detention has been imposed on the person.
- (4) A child and family impact assessment must—
 - (a) consider how the imprisonment or other detention is likely to affect the wellbeing of any child for whom the person is responsible,
 - (b) identify the wellbeing needs of any child arising from the imprisonment or other detention,
 - (c) confirm any actions to be taken, as a result of the child and family impact assessment, to ensure that the child’s wellbeing needs are met,
 - (d) confirm who is to be responsible for taking those actions,
 - (e) provide advice and information about what can best be done to address the wellbeing needs of the child, and
 - (f) specify arrangements for a future review of the child and family impact assessment.
- (5) The Scottish Ministers may by regulations make provision requiring such persons (or descriptions of persons) as may be prescribed in the regulations to undertake a child and family impact assessment under subsection (2).
- (6) Regulations under subsection (5) are subject to the affirmative procedure.>

Before section 83

Michael Matheson

69 Before section 83, insert—

<CHAPTER

PUBLICATION OF PROSECUTORIAL TEST

Publication of prosecutorial test

- (1) The Lord Advocate must make available to the public a statement setting out in general terms the matters about which a prosecutor requires to be satisfied in order to initiate, and continue with, criminal proceedings in respect of any offence.
- (2) The reference in subsection (1) to a prosecutor is to one within the Crown Office and Procurator Fiscal Service.>

Section 83

Michael Matheson

- 70** Leave out section 83

Section 84

Michael Matheson

- 71** Leave out section 84

Section 85

Michael Matheson

- 72** Leave out section 85

Section 86

Michael Matheson

- 73** In section 86, page 39, line 24, leave out <, a detained person is to participate in a specified> and insert <at any time before or at a specified hearing, a detained person is to participate in the>

Michael Matheson

- 74** In section 86, page 39, line 32, leave out <an ad hoc hearing held> and insert <any proceedings at a specified hearing or otherwise in the case>

Michael Matheson

- 75** In section 86, page 39, line 35, leave out <a specified hearing or such an ad hoc hearing> and insert <any specified hearing or other proceedings>

Michael Matheson

- 76** In section 86, page 39, line 37, after <hearing> insert <or other proceedings>

Michael Matheson

- 77** In section 86, page 40, line 1, after <hearing> insert <or other proceedings>

Michael Matheson

- 78** In section 86, page 40, line 6, leave out <a specified hearing> insert <any specified hearing or other proceedings>

Michael Matheson

- 79 In section 86, page 40, line 9, after <charge> insert <on any complaint or indictment>

Michael Matheson

- 80 In section 86, page 40, line 16, leave out from beginning to <where> in line 21 and insert—
<(3) The court may postpone a specified hearing to a later day if>

Michael Matheson

- 81 In section 86, page 40, leave out lines 26 to 28

Michael Matheson

- 82 In section 86, page 40, line 28, at end insert—

<Effect of postponement

- (1) Except where a postponement under section 288I(3) is while section 18(2) of the Criminal Justice (Scotland) Act 2015 applies to a detained person, the following do not count towards any time limit arising in such a person’s case if such a postponement in the case is to the next day on which the court is sitting—
 - (a) that next day,
 - (b) any intervening Saturday, Sunday or court holiday.
- (2) Even while section 18(2) of the Criminal Justice (Scotland) Act 2015 applies to a detained person, that section does not prevent a postponement under section 288I(3) in the person’s case.
- (3) In section 288I and this section, “postpone” includes adjourn.>

After section 86

Michael Matheson

- 83 After section 86, insert—

<Electronic proceedings

- (1) In section 305 (Acts of Adjournal) of the 1995 Act, after subsection (1) there is inserted—
 - “(1A) Subsection (1) above extends to making provision by Act of Adjournal for something to be done in electronic form or by electronic means.”.
- (2) These provisions of the 1995 Act are repealed—
 - (a) in section 141—
 - (i) subsection (3A),
 - (ii) in subsection (5), the words “(including a legible version of an electronic communication)”,
 - (iii) subsection (5ZA),
 - (iv) in subsection (5A), paragraph (b) together with the word “or” immediately preceding it,

- (v) subsections (6A), (7A) and (7B),
 - (b) section 303B together with the italic heading immediately preceding it,
 - (c) section 308A.
- (3) In the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, section 42 is repealed.>

Michael Matheson

84 After section 86, insert—

<CHAPTER

AUTHORISATION UNDER PART III OF THE POLICE ACT 1997

Authorisation of persons other than constables

In section 108 (interpretation of Part III) of the Police Act 1997, after subsection (1) there is inserted—

- “(1A) A reference in this Part to a staff officer of the Police Investigations and Review Commissioner is to any person who—
- (a) is a member of the Commissioner’s staff appointed under paragraph 7A of schedule 4 to the Police, Public Order and Criminal Justice (Scotland) Act 2006, or
 - (b) is a member of the Commissioner’s staff appointed under paragraph 7 of that schedule to whom paragraph 7B(2) of that schedule applies.”>

Margaret Mitchell

105 After section 86, insert—

<CHAPTER

EVIDENCE RELATING TO SEXUAL OFFENCES: LEGAL REPRESENTATION

Evidence relating to sexual offences: legal representation

In section 275 (exception to restrictions under section 274) of the 1995 Act, after subsection (5), insert—

- “(5A) Where an application under subsection (1) is made, the complainer must in respect of that application—
- (a) be informed of the right of the complainer—
 - (i) to seek legal advice,
 - (ii) to appoint a legal representative,
 - (b) be given the opportunity—
 - (i) to seek such advice,
 - (ii) to appoint such a representative.
- (5B) Where the complainer appoints a legal representative—
- (a) a copy of the application must be sent to the legal representative, and
 - (b) the legal representative must be given an opportunity to—
 - (i) submit written evidence on the matters set out in the application in accordance with subsection (3),

(ii) represent the complainer at any hearing in relation to the application.

(5C) The Scottish Ministers must by regulations make provision for fees incurred by a legal representative appointed under subsection (5B) to be paid out of the Scottish Legal Aid Fund.”.>

Section 87

Michael Matheson

85 In section 87, page 42, line 12, leave out <a time period> and insert <or extend a time limit>

Michael Matheson

86 In section 87, page 42, leave out line 18

Michael Matheson

87 In section 87, page 42, line 27, at end insert—

<55CA Steps following arbitration

- (1) If representations under section 55B(1) are made in terms settled through arbitration in accordance with the PNBS’s constitution, the Scottish Ministers must take all reasonable steps appearing to them to be necessary for giving effect to those representations.
- (2) However, this—
 - (a) requires the Scottish Ministers to take such steps only in qualifying cases (see paragraph 4C(2) of schedule 2A),
 - (b) does not require the Scottish Ministers—
 - (i) to take such steps in relation to representations that are no longer being pursued by the PNBS, or
 - (ii) where such steps would comprise or include the making of regulations under section 48, to make regulations under that section more than once with respect to the same representations.>

Michael Matheson

88 In section 87, page 42, line 34, leave out from <subsection> to end of line and insert <this Chapter, “reporting year” is as defined in the PNBS’s constitution.”.>

Michael Matheson

89 In section 87, page 43, line 3, at end insert—

<() In section 125 (subordinate legislation) of the Police and Fire Reform (Scotland) Act 2012, after subsection (3) there is inserted—

“(3A) Regulations under paragraph 4(6) of schedule 2A are subject to the affirmative procedure if they include provisions of the kind mentioned in paragraph 4B(2) or 4C(2) of that schedule.”.>

Schedule 3

Michael Matheson

- 91 In schedule 3, page 50, leave out line 6

Michael Matheson

- 92 In schedule 3, page 50, line 12, leave out <and deputy chairperson>

Michael Matheson

- 93 In schedule 3, page 50, line 18, leave out <or deputy chairperson>

Michael Matheson

- 94 In schedule 3, page 50, line 21, at end insert—

<Temporary chairperson

- (1) The PNBS may have a temporary chairperson if (for the time being)—
 - (a) there is no chairperson, or
 - (b) the chairperson is unavailable to act.
- (2) A reference in this Chapter to the chairperson is to be read, where appropriate to do so by virtue of sub-paragraph (1), as meaning or including (as the context requires) the temporary chairperson.>

Michael Matheson

- 95 In schedule 3, page 50, line 24, leave out <chairperson or deputy chairperson> and insert <the chairperson>

Michael Matheson

- 96 In schedule 3, page 50, line 34, leave out from second <the> to end of line 35 and insert <consensus to be reached among the members of the PNBS on the terms of representations to be made under section 55B(1) or 55C(1).>

Michael Matheson

- 97 In schedule 3, page 51, leave out lines 1 and 2 and insert—

<() The constitution—

- (a) may require a dispute on representations to be made under section 55B(1) to be submitted to arbitration by agreement among the members to do so, and must not prevent such a dispute from being submitted to arbitration on such agreement (except prevention by way of limitation as allowed below),
- (b) may—
 - (i) authorise the chairperson to submit such a dispute to arbitration without such agreement,
 - (ii) limit how often within a reporting year such a dispute can be submitted to arbitration (including limitation framed by reference to particular matters or circumstances).>

Michael Matheson

98 In schedule 3, page 51, line 18, at end insert—

- <(6) The constitution, or any revision of it, has effect only when brought into effect by the Scottish Ministers by regulations.>

Michael Matheson

99 In schedule 3, page 51, line 18, at end insert—

<Process of arbitration

4A(1) Sub-paragraph (2) applies where—

- (a) a dispute is submitted to arbitration in accordance with the constitution, and
- (b) no arbitration agreement relating to the dispute is in place.

(2) A document submitting the dispute to arbitration is deemed to be an arbitration agreement.

(3) For the application of the Arbitration (Scotland) Act 2010, a reference in this paragraph to an arbitration agreement is to such an agreement as defined by section 4 of that Act.

4B(1) Sub-paragraph (2) applies for the purpose of arbitration in accordance with the constitution (whether such arbitration arises by reason of a real or deemed arbitration agreement).

(2) Regulations under paragraph 4(6) may include provisions disapplying or modifying the mandatory rules in schedule 1 to the Arbitration (Scotland) Act 2010.

4C(1) Sub-paragraph (2) applies for the purpose of the operation of section 55CA.

(2) Regulations under paragraph 4(6) may include provisions specifying, by reference to particular matters or circumstances, what are qualifying cases.>

Michael Matheson

100 In schedule 3, page 51, line 21, leave out <and deputy chairperson>

After section 87

Michael Matheson

90 After section 87, insert—

<Consequential and transitional

(1) In connection with section 87—

- (a) in schedule 1 to the Freedom of Information (Scotland) Act 2002, after paragraph 50A there is inserted—

“50B The Police Negotiating Board for Scotland.”,

- (b) in schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003, at the appropriate place under the heading referring to offices there is inserted—

“Chairperson of the Police Negotiating Board for Scotland”.

- (2) On the coming into force of section 87—
- (a) a person then holding office as the chairman of the Police Negotiating Board for the United Kingdom by virtue of section 61(2) of the Police Act 1996 is to be regarded as if appointed as the chairperson of the Police Negotiating Board for Scotland under paragraph 2(2) of schedule 2A to the Police and Fire Reform (Scotland) Act 2012,
 - (b) any agreements then extant within or involving the Police Negotiating Board for the United Kingdom (so far as relating to the Police Service of Scotland) of the kind for which Chapter 8A of Part 1 of the Police and Fire Reform (Scotland) Act 2012 includes provision are to be regarded as if made as agreements within or involving the Police Negotiating Board for Scotland by virtue of that Chapter.>

Before section 1

Alison McInnes

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—
 - (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

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) Scotland’s Commissioner for Children and Young People, 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.>

Alison McInnes

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.”>

Section 5

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).>

Section 7

John Finnie

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

Section 8

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*).>

Section 10

Mary Fee

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

Section 11

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*).>

After section 11

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—
 - (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).>

Section 12

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*).>

Section 13

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*).>

Section 14

John Finnie

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

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.>

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.

(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.>

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)>

Section 15

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)>

Section 17

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).>

Section 18

Michael Matheson

- 101 In section 18, page 9, line 6, at end insert <(by virtue of a determination by the court that the person is to do so by such means)>

Section 20

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.>

Section 23

John Finnie

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

Section 24

John Finnie

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

Section 25

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>

Elaine Murray

Supported by: Alison McInnes

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

John Finnie

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

Elaine Murray

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

John Finnie

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

Section 30

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>

Section 31

Elaine Murray

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

Section 32

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)>

Section 33

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>

John Finnie

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

John Finnie

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

After section 34

Mary Fee

40 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.
- (2) With a view to facilitating the provision of care and support to the child while the person is in police custody, the constable must send intimation of the matters 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 matters are—
 - (a) the fact that the person is in custody,
 - (b) the place where the person is in custody,
 - (c) the time limits for keeping the person in custody that apply under Chapter 2 of this Part.>

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.
- (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.>

Section 42

Alison McInnes

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

<() search a child,>

Mary Fee

41 In section 42, page 20, line 19, after <child> 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>

Elaine Murray

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

After section 42

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—
 - (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).>

Before section 54

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.>

After section 56

Mary Fee

46 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.
- (2) In this Part, references to a person who has responsibility for a child are references to—
 - (a) a person who is a parent or guardian having parental responsibilities or parental rights under any enactment in relation to a child,
 - (b) a person who—
 - (i) is otherwise legally liable to maintain a child, or
 - (ii) has care of a child.>

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