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Ar faidhle/Our ref: KM/CJBill

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Dear Christine,

## **CRIMINAL JUSTICE (SCOTLAND) BILL**

Parliamentary scrutiny of the Criminal Justice (Scotland) Bill will re-commence in September and I am writing to provide an update to the Committee on the Bill, given the period of time which has elapsed since Stage 1.

### **Overview of the Bill's content**

As set out in the Policy Memorandum, the Criminal Justice (Scotland) Bill is the legislative vehicle to take forward the next stage of essential reforms to the Scottish criminal justice system. The Bill achieves this by taking forward and further developing the majority of the recommendations of two independent reviews of key aspects of the criminal justice system. The Bill also includes a number of other key provisions which the Scottish Government considers also assist in meeting its overall objectives of ensuring a Safer and Stronger Scotland in which public services are high quality, continually improving, effective and responsive to local people's needs.

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The Bill comprises three elements:

- Provisions which have been developed from the recommendations of Lord Carloway's Review of Scottish Criminal Law and Practice (these reforms would modernise arrest, custody and questioning procedures, enhance protections for the accused);
- Provisions which have been developed from the recommendations of Sheriff Principal Bowen's Independent Review of Sheriff and Jury Procedure ( to enable and promote the efficient and effective management of sheriff and jury cases including enabling earlier communication between the prosecution and defence and help active judicial case management); and
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- A number of additional relevant provisions which take forward a range of key justice priorities.

The additional provisions which are being taken forward by the Bill are intended to complement the reforms which are based on Lord Carloway and Sheriff Principal Bowen's recommendations by implementing a key range of justice priorities or efficiency measures. On introduction the additional provisions contained in the Bill were:

- Raising the maximum custodial sentences available to courts for handling offensive weapons offences, including knife possession, from four to five years;
- Making clearer the law on court powers to impose sentences on offenders who commit offences while on early release;
- Introducing a people trafficking criminal aggravation when sentencing for other crimes with a connection to people trafficking (this has now been superseded by the recent Human Trafficking and Exploitation (Scotland) Bill) ;
- Enabling increased use of live TV links;
- Changing the method of juror citation; and
- Retaining a collective bargaining mechanism in Scotland for the negotiation of police officer pay, following the Home Secretary's decision to abolish the UK Police Negotiating Board.

### **Parliamentary Process to date**

The Bill was introduced to Parliament on 20 June 2013. Your Committee took evidence on the Bill over the course of 11 sessions, and on 6 February 2014 published its report on the Bill. I note that the Committee's Stage 1 Report supported the general principles of the Bill, with the exception of the corroboration reform, where a majority of the Committee recommended these provisions be removed. The Bill was then debated on 27 February 2014, and Parliament approved its general principles.

As you will recall alongside the Stage 1 consideration of this Bill, on 6 February 2014 Kenny MacAskill, the former Cabinet Secretary for Justice, announced that Lord Bonomy would head an independent reference group to consider what additional safeguards and changes to law and practice may be needed to Scotland's criminal justice system following the then planned abolition of the corroboration requirement in the Criminal Justice (Scotland) Bill. Lord Bonomy published his final report in April 2015 and this is available on the [Scottish Government website](#).

The Scottish Government proposed abolishing the corroboration requirement to improve access to justice for victims of crimes committed in private, including domestic abuse and sexual offences. Following completion of Lord Bonomy's Post-corroboration Safeguards Review, it was clear that substantial additional changes would be required alongside abolition. Given this, and the lack of consensus on this reform, I announced to Parliament on 21 April 2015 that the Scottish Government accepted that abolition should not go forward in the Criminal Justice (Scotland) Bill, and I would instead consider and work with stakeholders towards a greater degree of consensus on a package of reforms. This work will begin later this year and will include consideration of Lord Bonomy's recommendations alongside the corroboration requirement itself.

I will now move on to address the parts of the Bill in order and provide an update to the Committee on the Scottish Government's position on the points raised in your Stage 1 report and advise on the amendments which I intend to lodge for the Committee's consideration at Stage 2.

### **Part 1 – Police powers**

Part 1 of the Bill creates a new regime for arrest, custody and questioning of suspects. The underlying purpose of the changes is to:

- modernise and clarify the system of arrest, custody and questioning to ensure the rights of accused persons and the victims of crime remain appropriately balanced;
- simplify and clarify the process of arrest;
- ensure people are not unnecessarily or disproportionately held in custody;
- create flexibility to manage criminal investigations, balancing the needs of the enquiry, public safety and the fundamental human rights of suspects;
- set out clearly when a person's right to access a solicitor arises, how it is communicated and when these rights can be waived;
- provide powers to question a person after they have been officially accused of an offence;
- provide the highest standard of protection for children involved in the formal criminal justice process; and
- ensure vulnerable adult suspects are not disadvantaged during police procedures

### **Implementation – Training and i6**

The Committee raised concerns at Stage 1 about the burden Part 1 of the Bill could place on Police Scotland, particularly alongside the implementation and roll-out of i6.

The Scottish Government continues to work closely with Police Scotland and the Scottish Police Authority on the practicalities and financial impact of implementing the Bill and its interaction with the i6 programme to ensure the timetable for implementation is achievable

Implementation had previously been planned for April 2016. Work is already well under way on developing the Police Scotland training programme. Taking into account the scale of the training exercise required – alongside the training requirements for the i6 roll-out, which is commencing this year – the Scottish Government believes it would be more appropriate to work towards implementation in autumn 2016.

## Chapter 1 – Arrest

### *Terminology*

In its Stage 1 report, the Committee accepted the benefit of simplifying the powers of arrest but commented that the new terminology could be confusing. In particular, the Committee said the public and the media may not be able to distinguish between a person who has been arrested but not “officially accused” and a person who has been arrested and has been “officially accused”. Concerns were also expressed about the term “de-arrest” in relation to proposals to allow the police to release a person when the grounds for arrest no longer exist.

We continue to believe the terminology used is clear. The presumption of innocence remains after someone is arrested and whether a person is guilty, of course, is a matter for the courts. The Government agrees with Lord Carloway that having a single process – arrest – for taking a suspect into custody makes for a clearer system. The term “de-arrest” is not used in the Bill and the Government does not intend to take this forward in the amendments planned for Stage 2.

### *Suspect anonymity*

The Committee recognised that the issue of suspect anonymity is problematic but considered it merits further consideration and every effort should be made to ensure the reputation of the accused is not detrimentally affected by the provisions in the Bill.

The Scottish Government remains confident the police will make every effort to avoid disclosure of a suspect’s identity to the media. The principle of innocent until proven guilty is well understood. There are no current plans to make changes to the current position.

### *Defining arrest*

The Committee noted there was no consensus from witnesses on whether to define arrest but decided on balance they would rather have a definition in the Bill, and I am aware John Pentland has lodged an amendment which would define arrest.

The Scottish Government remains convinced that attempting to define arrest in the Bill is unnecessary. The Scottish Government believes leaving the term to take its natural meaning within the context of the Bill will allow the new system to operate smoothly and alongside other legislation which makes provision about arrest.

### *Arrest for attempts/conspiracy*

In its Stage 1 report, the Committee highlighted the differing viewpoints of the police and the Scottish Human Rights Commission on scope for the police to arrest people who have done nothing wrong and called on the Scottish Government to further consider this issue.

We have continued to engage with stakeholders on this. The Bill as introduced only allows a police officer to arrest a person if they have reasonable grounds for suspecting that person has committed or is committing an offence. This would be sufficient to arrest a person on suspicion that they have attempted or are conspiring to commit an offence because attempts and conspiracies to commit offences are criminal offences in their own right.

There is nothing in the Bill which will permit the police to arrest a person without grounds for suspecting that person has committed an offence.

### *Release from arrest*

The Committee wanted to ensure “de-arrest” does not lead to a situation where people are arrested without a proper assessment on whether arrest was appropriate.

The Scottish Government is persuaded that it should be possible for the police to release an arrested person, prior to arrival at a police station in certain circumstances. I intend to lodge amendments at Stage 2 to make provision for this.

The amendment will allow a person to be released prior to arriving at a police station only if there are no longer reasonable grounds to suspect the person of committing the offence for which they were arrested or an offence arising from the same circumstances. The amendments will include a requirement to record the reasons why an arrestee is released before arriving at a police station.

The police have an equivalent power at present in relation to people they detain under section 14 of the Criminal Procedure (Scotland) Act 1995 and its use is very limited. On this basis, I would not expect the power to release an arrestee before arriving at a police station to be used often in practice.

It will continue to be possible to release a suspect where a constable charges the person with an offence and having done so decides that the persons presence at the police station will not be required.

### *Letter of rights*

The Committee, in their Stage 1 report asked the Scottish Government to respond to the suggestion of some witnesses that information to be given to suspects as police stations should be provided both verbally and in writing with a view to ensuring that they clearly understand their rights.

Section 5 of the Bill places, on a statutory footing, that such information required to satisfy the EU Directive on the Right of Information in Criminal Proceedings, must be provided verbally or in writing as soon as reasonably practicable.

Since July 2013, a letter of rights, conveying information about the right of access to a lawyer has been provided to every suspect who is in a police station. The letter of rights was consulted on ahead of its introduction in July 2013. It was also welcomed by the Justice Committee at Stage One. This letter has been drafted in accessible language and is also available translated into 34 languages. In order to strengthen and simplify the advice that is given to all suspects, and to ensure compliance with the Directive, the Scottish Government worked with key stakeholders since 2013 to improve the letter of rights, and to also create separate versions designed to be accessible for children and those with learning difficulties and disabilities. Copies of all the letters can be found on the Scottish Government website.

In the course of discussions with stakeholders, various representatives made clear their opposition to requiring the police to verbally read the letter to all suspects. Police Scotland have indicated that they already endeavour to ensure all suspects understand their rights, reading the letter to suspects where necessary. However, they have estimated that reading the letter to all c.200,000 suspects processed each year would equate to an additional 16,666 hours of police time per annum.

I consider that the key issue is that individuals are provided with an effective and appropriately drafted letter of rights and given the opportunity to read and absorb the information

.An officer having to read through the whole letter, may add to what is already a confusing and stressful situation. My view is that having the letter read out to all suspects would not represent an additional safeguard. However, as part of the development of I6, Police Scotland have now built in an additional question which they will ask suspects during the booking in process. Suspects will be asked whether or not they wish the letter of rights to be read out to them. In my view, this is a proportionate way to address the understandable concerns that has been raised of the need to ensure all suspects fully understand their rights.

Given the above, I am convinced that the Bill offers the necessary safeguards and retains the flexibility to enable officers to read the letter of rights to suspects who wish them to do so.

## **Chapter 2 – Custody**

### *Detention limits*

The Bill as introduced allows a person to be kept in custody for a maximum of 12 hours. During Stage 1, the Scottish Government made a commitment to consider extending that in exceptional circumstances.

The Committee noted there were mixed views among members on whether detention beyond six hours is necessary. It recognised, however, there may also be situations where it could be necessary to consider extending beyond the 12 hour limit and sought further information on the exceptional circumstances in which such an extension might be granted, how often such extensions are likely to be granted and how the Scottish Government intends to ensure that extensions do not become the norm.

The Scottish Government listened to the evidence at Stage 1 and has continued to consider the appropriate detention limits. The purpose of the custody provisions is to strike an appropriate balance, ensuring no one is held unnecessarily or disproportionately, protecting the rights of suspects and victims while giving flexibility to carry out effective investigations. When the custody provisions are considered as a package, I believe it is clear the detention limit is not a target but the absolute maximum and the system is designed to ensure unnecessarily prolonged detentions cannot become the norm.

There are several safeguards built into the process. These include requirements for the initial custody authorisation to be given by a police officer who has not been involved in the investigation and for a mandatory custody review by an Inspector after six hours. In both cases, custody can only be authorised if the statutory test in section 10 of the Bill is satisfied. The provisions should also be read with the general duty on the police in section 41 to take every precaution to ensure a person is not unreasonably or unnecessarily held in police custody.

As the Committee noted in the Stage 1 report, statistics from June 2013 show the 80.4 per cent of people detained under the current legislation are held for up to six hours. 19.2 per cent of persons were detained for between six and 12 hours. Only 0.4 per cent of detainees (13 people in the month of June 2013) were held for a further period of up to 12 hours. Those 0.4 per cent of cases are the exceptional cases under the current legislation. The Stage 1 written evidence from Police Scotland includes detailed case studies of when such extensions are needed (see Appendix B of the written evidence submitted by Police Scotland in August 2013).

The Bill will create the new option of releasing a person on investigative liberation part way through the 12 hour custody period and arresting them again at a later stage. Investigative

liberation will provide vital flexibility in investigations, allowing time for complex and technical examinations of documents, telephones and computers to take place. In order to balance the interests of justice and protect the public, investigative liberation will be limited to taking place over a 28 day period, and a person may be released subject to conditions.

Police Scotland have made the case that several factors can combine to create exceptional cases where extensions to the 12 hour period may be required. These factors tend to affect the timing of when interviews can start, rather than the length of the interviews required. Police Scotland have also provided assurances that the purpose of extensions is to ensure interviews are conducted in circumstances fair to suspects – and victims – and to allow the police to conclude enquiries properly and gather sufficient evidence in order to charge a suspect. Some possible factors include:

- Suspects and victims may be too exhausted, traumatised, drunk or under the influence of drugs to be interviewed immediately after an arrest takes place and the suspect is brought to a police station. This is more likely when people are arrested late at night. In such cases, best practice in the public interest – and the interest of fairness – is to allow people a period to sober up or rest before interview.
- Urgent work may be needed to interview victims, trace witnesses and conduct other investigations – for example, examine a crime scene – before or at the same time as interviewing a suspect. It may not be in the interests of public safety to release a person suspected of a serious and violent offence on investigative liberation while such investigations take place.
- In some cases, it is considered best practice to examine a crime scene during daylight hours, even if an initial arrest took place at night. This may apply, for example, to examination of bed clothes at a rape scene. Releasing a suspect on investigative liberation in these circumstances, immediately after a suspected murder or rape may not be safe for the victim or the suspect.
- Forensic medical examinations may be required before interviews can take place. In areas of rural Scotland, victims and suspects may need to travel to specialist police medical suites or for examination by a Police Casualty Surgeon. These examinations and the travel times involved may reduce the time remaining for conducting interviews within the 12 hour detention limit.
- Other people – for example, interpreters and appropriate adults – may be required before interviews can commence. It is in the interests of justice and human rights that such people are present at interviews but it may take time to assess what support is required for an individual suspect and then arrange for the specialists to attend. Delays are possible if a suspect's needs are not immediately evident because they are also drunk or on drugs. These factors can reduce the time available for conducting interviews and, in complex cases extending the detention period beyond 12 hours may become necessary.

It is possible to extend detention periods by a further 12 hours under the current legislation, but not under the Bill as introduced.

Suspects in serious and complex cases affected by the factors I have set out above would therefore have to be released under the Bill if the 12 hour period expired before the police had obtained sufficient evidence to charge them with an offence.

This is a complex issue and one where, as the Committee has noted, there is a range of views amongst stakeholders. I am therefore giving further consideration to the approach the Government wishes to take at Stage 2.

#### *Investigative liberation – impact on private life*

The Committee sought assurances that investigative liberation will not have an unnecessary impact on a suspect's private life.

The Scottish Government has considered this matter further. In addition to the existing safeguards in the Bill, I plan to lodge amendments to ensure investigation liberation conditions can only be imposed for 28 consecutive days and cannot include curfews.

#### *Investigative liberation – notification of victims*

The Committee asked the Scottish Government to work with COPFS to ensure that, where they may be at risk, complainers are always informed timeously of the suspect's release on investigative liberation and of any conditions applied.

The Scottish Government continues to discuss with stakeholders the processes which will be required as a result of the Bill, including the process of notifying complainers where a suspect is released on investigative liberation.

#### *Investigative liberation – resource implications*

The Committee noted there were resource implications relating to investigative liberation.

The Scottish Government will continue to work closely with Police Scotland in relation to implementation of the Bill to ensure Police Scotland has adequate resources to deal with investigative liberation.

#### *Custody cases – times in custody/court sitting times*

The Committee was not convinced that specifying time-limits for periods in custody was not necessary at this Stage in light of the Police Scotland led working Group that has been set up to consider the issue. This working group continues to report regularly to the Justice Board and is now developing possible options, involving a limited number of courts being open seven days a week supplemented by video conferencing for some first appearances, for possible piloting. I will of course keep the Committee informed once any final decision is taken with regard to these potential options

### **Chapter 4 - Police interview**

The Committee welcomed the extension of the right to access to a solicitor to all suspects held in police custody. As Committee members will be aware, Lord Bonomy's Post-corroboration Safeguards Review Final Report recommended that "Scottish Ministers should forthwith abolish the requirement for some suspects to pay a contribution towards the cost of legal advice and assistance provided to them while they are in a police office". I have considered this recommendation and will bring forward regulations which will remove the requirement for suspects to pay a contribution towards the advice they receive at a police station.

I also intend to lodge an amendment to section 23 of the Bill. Section 3 of the Bill deals with information to be given *on arrest*. This is that a person must be informed that the person is under arrest; the reason for the arrest; that the person is under no obligation to say anything other than to give the information specified in section 26(3) (outlined above); that they have a



right to have intimation sent to a solicitor under section 35 and access to a solicitor under section 36. Section 3 however also provides that a person must be informed of the general nature of the offence in respect of which the person is arrested. Section 23 as currently drafted does not contain the requirement to tell a suspect what offence they are suspected of committing. It is proposed therefore that an amendment be brought forward to section 23 to provide for this. The amendment will ensure consistency with section 3 and will act as an additional safeguard for suspects.

### *Post Charge Questioning*

I remain of the view that, as recommended by Lord Carloway, post-charge questioning has an important role to play in the investigation of crime. I intend to introduce amendments to put beyond doubt that the suspect in this position is entitled to the same rights and protections as the suspect who is being questioned before charge; and, on top of that, to provide that the suspect must be informed of any conditions attached by the court to its authorisation of post-charge questioning (such as restrictions on the nature of the questions, or a time limit).

## **Chapter 5 - Child Suspects**

In its Stage 1 report, the Committee noted that the Victims and Witnesses (Scotland) Bill defines a child as a person up to the age of 18 and asked the Scottish Government to explain why there appears to be inconsistency between the protections for under-18s in this Bill compared with this recent legislation. In our response we said:

“While it might appear attractive to treat all individuals under 18 years consistently, the age-based laws which allow for 17 year olds to be living independently and marry reflect the quite different contexts and degrees of self-determination that can exist between a 10 and a 17 year old. The Scottish Government prefers an approach which would allow children aged 16 and 17 years to make their own decisions with safeguards in place to support them in this.”

After further consideration following discussions with Police Scotland and the Scottish Children’s Reporter Administration, we now believe amendments are required to improve the protections afforded to children in custody as the current Bill provisions are inconsistent with existing requirements set out in the Criminal Procedure (Scotland) Act 1995. Amendments will therefore be lodged at Stage 2 and relate to:

- young people aged 16 and 17 years of age who are subject to a Compulsory Supervision Order (or Interim Compulsory Supervisions Order) under the Children’s Hearings (Scotland) Act 2011. It has been proposed the Bill should specifically set out that all children who are subject to such Orders, and specifically those aged 16 and 17 years of age, should be treated in the same way as those aged under 16 years of age. Most significantly, this will remove their right to waive access to a solicitor.
- the need for the Bill to make specific provisions for the protection of child suspects whilst in police custody. The inclusion of those provisions will necessitate the repeal of certain provisions currently set out in the 1995 Act, specifically in relation to children being held in a place of safety pending their appearance at court. The new provisions propose to retain the use of places of safety with the continued provision of the rights of access to a parent, guardian or responsible person and access to a solicitor.

## Chapter 5 – vulnerable persons

The Bill makes provision relating to the support arrangements for certain vulnerable persons in police custody, at section 33. This was intended to reflect Lord Carloway's recommendations in relation to vulnerable adult suspects and, as he defined those under 18 as children, this section currently applies only to those over that age.

At Stage 1, however, it was suggested by organisations including Police Scotland and the Scottish Appropriate Adult Network that this provision be extended to include 16 and 17 year olds, to reflect current practice whereby appropriate adult support is available to vulnerable suspects aged 16 and over.

As the Bill already makes important distinctions between those under 16 years of age and those aged 16 and 17, and to avoid creating a potential disparity between the support provided for vulnerable suspects over 16 and those over 18, I consider that this safeguard should be extended. Amendments to apply section 33 to those over the age of 16 will be lodged at Stage 2.

### Part 2 – Corroboration

As mentioned above, at this time, the Scottish Government accepts a consensus has not yet been reached about removing the requirement for corroboration in criminal cases. I am mindful members of your Committee have previously expressed concerns about this reform going ahead in this Bill and Margaret Mitchell has lodged amendments to remove the relevant sections from the Bill. The consideration of these amendments is, of course, now a matter for the Committee but I can confirm the Government is supportive of removing the reform from this Bill. We also plan to lodge an amendment to remove the increase to the jury majority provision from the Bill as we consider this reform to be linked to the abolition of the corroboration reform. As I mentioned in my statement to Parliament in April, we will, however, begin further work on creating a wider package of reforms and Lord Bonomy's recommendations and the corroboration rule will be considered in this context.

In the meantime, I have considered whether any of the other suggestions made by Lord Bonomy can be taken forward at this stage. One of Lord Bonomy's recommendations was that the prosecutorial test – the criteria applied by prosecutors when deciding whether or not to initiate proceedings – should be published by the Lord Advocate. It seems reasonable to me that it should, and I am therefore considering whether to bring forward an appropriate amendment at stage 2.

### Part 3 – Solemn Procedure

The Bill as introduced places a duty on the prosecution and the defence to prepare joint written record, advising on the state of preparedness of a case. This joint written record must be submitted to the court no less than two days before the first diet by the Procurator Fiscal. The purpose of the written record is to ensure cases proceed to trial in an orderly fashion with such matters as can be agreed in advance having been resolved.

There were concerns from a number of stakeholders that separate written records should instead be lodged by both the defence and the Procurator Fiscal. The Committee in their Stage 1 report commented: "The Committee welcomes the Cabinet Secretary's commitment to review whether the Bill could usefully be amended to allow individual written records on the state of preparedness of cases to be submitted by the defence and prosecution."

Since Stage 1, there have been ongoing discussions with Scottish Courts and Tribunals Service and the Crown Office and Procurator Fiscal Service on this issue. As a result of these discussions, the Scottish Government plans to bring forward amendments to the Bill to allow for a written record to be lodged separately by the Procurator Fiscal and the defence. I also intend to lodge amendments to provide the Criminal Courts Rules Council with the power to enable a joint written record to be a requirement in the future should that become necessary in light of experience with the separate written record.

#### **Part 4 – Sentencing**

The Bill includes provisions relating to the maximum penalties for handling offensive weapons and the sentencing of prisoners who commit new offences while on early release from existing sentences. These provisions were generally welcomed during Stage 1 scrutiny and no Scottish Government amendments are planned in this area at Stage 2.

#### **Part 5 – Appeals and SCCRC**

The Bill has a policy objective of speeding up appeals and it proposes that, when deciding whether to allow an appeal late, the test the High Court should apply is to ask itself whether there are exceptional circumstances for doing so.

The Committee noted concerns that, in applying a higher test for allowing late appeals, cases with merit may not be heard unless they meet an exceptional circumstances test. The Committee asked the Scottish Government to consider the Law Society of Scotland's recommendation that sections 76 and 77 be redrafted with an emphasis on the interests of justice.

The Scottish Government has considered these recommendations but remains of the view an "interests of justice" test would fail to get across that an appeal should be allowed to proceed in breach of the time limits in exceptional circumstances.

This part of the Bill also includes provisions relating to the powers of the High Court when considering appeal cases that originate by way of a reference from the Scottish Criminal Cases Review Commission (SCCRC). We note the Stage 1 report recommendation in this area to change the provisions so that the High Court would no longer consider 'interests of justice' when deciding SCCRC referred appeal cases.

#### **Part 6 – Miscellaneous**

##### *Human trafficking*

I intend to lodge amendments to remove Chapter 1 of Part 6 as these have now been superseded by provisions contained in the Human Trafficking and Exploitation (Scotland) Bill, which is currently before Parliament.

##### *Police Negotiating Board for Scotland*

This legislation will establish the Police Negotiating Board for Scotland, which will retain collective bargaining for police officer terms and conditions in Scotland, which has been abolished in the rest of the UK. In addition to the amendments I intend to lodge relating to the general operation and administration of the new body.

I will also lodge amendments to enable arbitration on matters under the remit of the PNBS, to be binding on the Scottish Ministers. This will be under specific circumstances as set out

in regulations and in the PNBS constitution (the constitution will also be brought in to effect by regulations and therefore subject to Parliamentary scrutiny).

### *TV links and electronic signatures*

The Bill includes provisions intended to allow for the greater use of TV links in court proceedings. Since stage 1, the Scottish Government has launched its Digital Strategy for Justice, which provides a framework for the greater use of digital technology throughout the justice system. So as well as minor amendments in respect of the provisions on TV links, I intend to lodge amendments to permit more widespread use of electronic signatures in criminal proceedings, which will assist in ensuring that organisations can realise the full benefits of conducting business electronically.

### **Other Issues**

The Committee asked to be kept updated on work in relation to the possibility of raising the minimum age of criminal responsibility. We note that Alison McInnes has lodged an amendment which would raise the age from eight to 12.

I can advise that policy in relation to the minimum age of criminal responsibility remains under active consideration and the underlying issues – including disclosure of criminal records, forensic samples, police investigatory powers, victims and community confidence – are complex. It is our view therefore that it is not appropriate to add such a substantial, complex and potentially controversial issue to the Bill without properly assessing these important underlying issues which are not addressed at all through Alison McInnes' amendment. Stage 2 of the Bill is also not the appropriate vehicle to address the issues.

We therefore intend to oppose the amendment on the basis that the underlying issues need to be fully worked through and there is a strong argument for further consultation before any change is committed to.

### **Police Investigation Review Commissioner (PIRC)**

I also intend to rectify an omission in legislation to extend certain provisions under the Police Act 1997 to apply to directly employed staff rather than only "staff officers" of the Police Investigations and Review Commissioner. The definition of "staff officers" is a police officer seconded from the police service. The omission creates a problem for property interference authorisations by the PIRC under that legislation as the Commissioner does not have any seconded staff from the police service.

### **Stop and Search**

An independent Advisory Group, chaired by John Scott QC, is examining the use of stop and search powers in Scotland, in particular whether consensual stop and search should continue, whether the practice overall should be subject to a code of practice and whether any additional steps require to be taken, including any consequent legislation or change in practice that may be necessary. The group will make its recommendations by the end of August.

Alison McInnes has already lodged amendments which would end consensual stop and search and introduce a statutory code of practice.

Once I have considered the Advisory Group's report and recommendations, I intend to lodge any appropriate amendments at Stage 2. As the Advisory Group is not due to report until the end of August, it would be helpful if the Committee could take this into account when scheduling its consideration of Stop and Search.

I hope this detailed update on the Bill is helpful to you and members of the Committee.

*With Best Wishes*



**MICHAEL MATHESON**