Criminal Justice (Scotland) Bill

Groupings of Amendments for Stage 3

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;
- the text of amendments to be debated on the day of Stage 3 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

Note: The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

Group 1: Move Part A1
5, 7, 9, 13, 14, 15, 20, 23, 24, 28, 31

Group 2: Search of person not in police custody: lawfulness of search by constable
83, 6, 8

Group 3: Search of person not in police custody: publication of information by police
10, 32

Group 4: Search of person not in police custody: provisions about possession of alcohol
11, 12, 84, 1, 2

Debate to end no later than 35 minutes after proceedings begin

Group 5: Code of practice
16, 17, 18, 19, 21, 22, 25, 26, 27, 29, 30, 77

Group 6: Arrest and detention in connection with bail breaches
33, 34, 35, 37, 38, 53, 79, 80, 81
**Group 7:** Extension of period of custody without charge from 12 to 24 hours
3, 36, 4

**Group 8:** Investigative liberation: release on conditions
39, 85

Debate to end no later than 1 hour 30 minutes after proceedings begin

**Group 9:** Rank and independence of constable required to take certain decisions
40, 41, 42, 45, 46, 47, 48, 49, 50

**Group 10:** Minor, consequential and drafting amendments
43, 51, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 74, 75, 76, 78, 82

**Group 11:** Questioning following arrest
44

**Group 12:** Power to modify application of Part 1
52

Debate to end no later than 2 hours after proceedings begin

**Group 13:** Age of criminal responsibility
86, 91

**Group 14:** Children affected by parental imprisonment
87, 88, 89

**Group 15:** Support for vulnerable persons: appropriate adult services
65, 66, 67, 68, 69, 70, 71, 72, 73

**Group 16:** Recovery of documents in sexual offences cases: legal representation
90

Debate to end no later than 2 hours 40 minutes after proceedings begin
Amendments in debating order

**Group 1: Move Part A1**

Michael Matheson
5 Move section A1 to after section 56
Michael Matheson
7 Move section B1 to after section 56
Michael Matheson
9 Move section C1 to after section 56
Michael Matheson
13 Move section D1 to after section 56
Michael Matheson
14 Move section E1 to after section 56
Michael Matheson
15 Move section F1 to after section 56
Michael Matheson
20 Move section G1 to after section 56
Michael Matheson
23 Move section H1 to after section 56
Michael Matheson
24 Move section I1 to after section 56
Michael Matheson
28 Move section J1 to after section 56
Michael Matheson
31 Move section K1 to after section 56

**Group 2: Search of person not in police custody: lawfulness of search by constable**

Michael Matheson
83 In section B1, page 1, line 17, after <place> insert—
   <( )>
Michael Matheson

6  In section B1, page 1, line 18, at end insert <, or

( ) in circumstances in which the constable believes that it is necessary to do so with respect to the care or protection of the person.>

Michael Matheson

8  After section B1, insert—

<Public safety at premises or events

(1) A person who is not in police custody may be searched by a constable if—

(a) the person—

(i) is seeking to enter, or has entered, relevant premises, or

(ii) is seeking to attend, or is attending, a relevant event, and

(b) the further criteria are met.

(2) Premises are or an event is relevant if—

(a) the premises may be entered, or the event may be attended, by members of the public (including where dependent on possession of a ticket or on payment of a charge), and

(b) the entry or the attendance is controlled, at the time of the entry or the attendance, by or on behalf of the occupier of the premises or the organiser of the event.

(3) The further criteria to be met are that—

(a) the entry or the attendance is subject to a condition, imposed by the occupier of the premises or the organiser of the event, that the person consents to being searched, and

(b) the person informs the constable that the person consents to being searched by the constable.

(4) A search under this section is to be carried out for the purpose of ensuring the health, safety or security of people on the premises or at the event.

(5) Anything seized by a constable in the course of a search carried out under this section may be retained by the constable.>

Group 3: Search of person not in police custody: publication of information by police

Michael Matheson

10  Before section D1, insert—

<Publication of information by police

(1) The Police Service of Scotland must ensure that, as soon as practicable after the end of each reporting year, information is published on how many times during the reporting year a search was carried out by a constable—

(a) of a person not in police custody, and
(b) otherwise than under the authority of a warrant expressly conferring a power of search.

(2) So far as practicable, the information is to disclose (in addition)—

(a) how many persons were searched on two or more occasions,
(b) the age and gender, and the ethnic and national origin, of the persons searched,
(c) the proportion of searches that resulted in—
   (i) something being seized by a constable,
   (ii) a case being reported to the procurator fiscal,
(d) the number of complaints made to the Police Service of Scotland about the carrying out of searches (or the manner in which they were carried out).

(3) In this section, “reporting year” means a yearly period ending on 31 March.

Michael Matheson

32 Leave out section L1

Group 4: Search of person not in police custody: provisions about possession of alcohol

Elaine Murray

11 In section D1, page 2, line 18, at end insert—

≤( ) send a copy of the proposed regulations to—
   (i) the Chief Constable of the Police Service of Scotland,
   (ii) the Scottish Human Rights Commission,
   (iii) the Commissioner for Children and Young People in Scotland, and
   (iv) such other persons as the Scottish Ministers consider appropriate.≥

Elaine Murray

12 In section D1, page 2, line 18, at end insert—

≤( ) When laying before the Scottish Parliament a draft of an instrument containing regulations under this section, the Scottish Ministers must also so lay a statement—
   (a) giving reasons for wishing to make the regulations as currently framed (and confirming whether the regulations will amend the relevant enactment in the same way as shown in the proposed regulations),
   (b) summarising—
      (i) the responses received by them to the public consultation on the proposed regulations,
      (ii) the representations made to them by the persons to whom a copy of the proposed regulations was sent.≥
In section D1, page 2, line 18, at end insert—


(2A) For the purposes of a consultation under subsection (2), the Scottish Ministers must—

(a) lay a copy of the proposed regulations before the Scottish Parliament,

(b) publish in such manner as they consider appropriate a copy of the proposed regulations, and

(c) have regard to the matters mentioned in subsection (2B).

(2B) The matters are—

(a) any resolution of the Parliament made,

(b) any report of any committee of the Parliament published,

(c) any representations to the Scottish Ministers made,

in relation to the proposed regulations within 60 days of the day on which the copy of the proposed regulations is laid before the Parliament.

(2C) In calculating any period of 60 days for the purposes of subsection (2B), no account is to be taken of any time during which the Scottish Parliament is dissolved or in recess for more than 4 days.

(2D) When laying a draft of an instrument containing regulations under this section before the Scottish Parliament, the Scottish Ministers must also lay before the Parliament an explanatory document giving details of—

(a) the consultation carried out under subsection (2),

(b) any representations received as a result of the consultation, and

(c) the changes (if any) made to the proposed regulations as a result of those representations.

Leave out section D1

In section E1, page 2, line 24, leave out subsection (2)

Group 5: Code of practice

In section G1, page 3, line 7, after <out> insert <(in particular)>

In section G1 page 3, line 8, leave out <such a search> and insert <a search of such a person>

In section G1, page 3, leave out lines 10 and 11 and insert—

<(c) in relation to such a search—>
(i) the record to be kept,
(ii) the right of someone to receive a copy of the record.

Michael Matheson
19 In section G1, page 3, leave out line 12

Michael Matheson
21 In section H1, page 3, line 30, leave out subsection (2A) and insert—
   <(2A) So far as practicable, a review conducted under subsection (2) must be completed within
   6 months of the day on which the review begins.>

Michael Matheson
22 In section H1, page 4, line 2, leave out <to K1> and insert <, J1 (except subsection (3)) and K1
   (except subsection (2A))>

Michael Matheson
25 In section J1, page 4, line 20, at end insert—
   <( ) the Police Investigations and Review Commissioner,>

Michael Matheson
26 In section J1, page 4, leave out line 23

Michael Matheson
27 In section J1, page 4, line 24, at end insert—
   <(3) Subsection (1) or (2) is complied with in relation to a code of practice having (or to
   have) effect for the first time even if the consultation has been initiated before the day
   on which this section comes into force.>

Michael Matheson
29 In section K1, page 4, line 26, leave out <a day appointed> and insert <the day appointed for
   the code>

Michael Matheson
30 In section K1, page 4, line 31, leave out subsection (2A) and insert—
   <(2A) No later than at the end of the 12 months beginning with the day on which this section
   comes into force, there must be so laid a draft of an instrument containing regulations
   bringing a code of practice into effect.>

Michael Matheson
77 In section 90, page 54, line 8, leave out subsection (1) and insert—
   <(1) The following provisions come into force on the day after Royal Assent—
   (a) sections E1 and G1 to K1,
   (b) this Part.>
Group 6: Arrest and detention in connection with bail breaches

Michael Matheson

33 In section 4, page 6, line 36, after <19(2)> insert <, or

( ) section 28(3A) of the 1995 Act>

Michael Matheson

34 In section 7, page 9, line 23, after <offence> insert <, or

( ) the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions)>

Michael Matheson

35 In section 11, page 10, line 1, after <12A> insert <, or

( ) the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions)>

Michael Matheson

37 In section 12A, page 11, line 12, after <offence> insert <, or

( ) the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions)>

Michael Matheson

38 In section 9, page 12, line 11, after <offence> insert <, or

( ) the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions)>

Michael Matheson

53 In section 56, page 36, line 21, at end insert—

<( ) the person is brought before a court under section 28(2) or (3) of the 1995 Act,>

Michael Matheson

79 In schedule 1, page 59, leave out lines 4 to 8

Michael Matheson

80 In schedule 1, page 61, line 11, at end insert—

<In section 28—

(a) after subsection (1) there is inserted—

“(1ZA)Where—

(a) a constable who is not in uniform arrests a person under subsection (1), and

(b) the person asks to see the constable’s identification,

the constable must show identification to the person as soon as reasonably practicable.”;>
(b) after subsection (3) there is inserted—

“(3A) If—

(a) a person is in custody only by virtue of subsection (1) or (1A), and

(b) in the opinion of a constable there are no reasonable grounds for suspecting that the person has broken, or is likely to break, a condition imposed on the person’s bail,

the person must be released from custody immediately.

(3B) An accused is deemed to be brought before a court under subsection (2) or (3) if the accused appears before it by means of a live television link (by virtue of a determination by the court that the person is to do so by such means).”.

Michael Matheson

81 In schedule 1, page 61, line 11, at end insert—

<After section 28 there is inserted—

“28A Application of the Criminal Justice (Scotland) Act 2015 to persons arrested and detained under section 28

(1) Section 7(2) of the Criminal Justice (Scotland) Act 2015 (“the 2015 Act”) does not apply to an accused who has been arrested under section 28(1) of this Act.

(2) The following provisions of the 2015 Act apply in relation to a person who is to be brought before a court under section 28(2) or (3) of this Act as they apply in relation to a person who is to be brought before a court in accordance with section 18(2) of the 2015 Act—

(a) section 18A,

(b) section 18B,

(c) section 18C.

(3) In relation to a person who is to be brought before a court under section 28(2) or (3) of this Act, the 2015 Act applies as though—

(a) in section 18B(2)—

(i) for paragraph (c) there were substituted—

“(c) that the person is to be brought before the court under section 28 of the 1995 Act in order for the person’s bail to be considered.”, and

(ii) paragraph (d) were omitted,

(b) in section 18C—

(i) in subsection (3)(c), for the words “after being officially accused” there were substituted “after being informed that the person is to be brought before a court under section 28(2) or (3) of the 1995 Act”, and

(ii) in subsection (4), for paragraph (c) there were substituted—

“(c) that the person is to be brought before the court under section 28 of the 1995 Act in order for the person’s bail to be considered.”,
(c) in section 35(1), for paragraph (d) there were substituted—

“(d) the court before which the person is to be brought under section 28(2) or (3) of the 1995 Act and the date on which the person is to be brought before that court.”.

Group 7: Extension of period of custody without charge from 12 to 24 hours

Alison McInnes

3 In section 12A, page 10, line 21, at end insert—

<(1A) Subsection (1) does not apply where—

(a) a constable believes that the person who is in police custody is under 18 years of age, or

(b) owing to mental disorder, the person who is in police custody appears to a constable to be unable to—

(i) understand sufficiently what is happening, or

(ii) communicate effectively with the police.

(1B) It is irrelevant for the purposes of subsection (1A)(b) whether the person is or is not in receipt of support of the type mentioned in section 33(3).>

Michael Matheson

36 In section 12A, page 10, leave out line 23 and insert—

<( ) is of, or above, the rank of—

(i) inspector, if a constable believes the person to be 18 years of age or over,

(ii) chief inspector, if a constable believes the person to be under 18 years of age, and>

Alison McInnes

4 In section 12A, page 11, line 12, at end insert—

<( ) In subsection (1A)(b)—

(a) “mental disorder” has the meaning given in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003,

(b) the reference to the police is to any—

(i) constable, or

(ii) person appointed as a member of police staff under section 26(1) of the Police and Fire Reform (Scotland) Act 2012.>
Group 8: Investigative liberation: release on conditions

Elaine Murray

39 In section 14, page 13, line 32, after <offence> insert <(including, for example, a condition aimed at securing that the person does not interfere with witnesses or evidence)>.

Elaine Murray

85 After section 17, insert—

<Disclosure of information: person released under section 14>

(1) 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 regulations 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 regulations subject to the negative procedure, modify the definition of “qualifying information” in subsection (4).>
Group 9: Rank and independence of constable required to take certain decisions

Michael Matheson
40 In section 20, page 19, line 26, after <sergeant> insert <or above>

Michael Matheson
41 In section 24, page 22, line 19, leave out <the constable is satisfied that>

Michael Matheson
42 In section 24, page 22, line 22, at end insert—

     <( ) A decision to allow the person to be interviewed without a solicitor present by virtue of
     subsection (4) may be taken only by a constable who—
               (a) is of the rank of sergeant or above, and
               (b) has not been involved in investigating the offence about which the person is to be
                   interviewed.>

Michael Matheson
45 In section 30, page 26, line 35, leave out <a> and insert <an appropriate>

Michael Matheson
46 In section 30, page 27, line 3, at end insert—

     <( ) In subsection (5), “an appropriate constable” means a constable who—
               (a) is of the rank of sergeant or above, and
               (b) has not been involved in the investigation in connection with which the person is
                   in custody.>

Michael Matheson
47 In section 32, page 28, line 26, at end insert—

     <( ) A decision to refuse or restrict access to a person in custody under subsection (1) or (2)
     may be taken only by a constable who—
               (a) is of the rank of sergeant or above, and
               (b) has not been involved in the investigation in connection with which the person is
                   in custody.>

Michael Matheson
48 In section 32A, page 29, line 17, at end insert—

     <( ) A decision to refuse or restrict access to a person in custody under subsection (4)(b) may
     be taken only by a constable who—
               (a) is of the rank of sergeant or above, and
               (b) has not been involved in the investigation in connection with which the person is
                   in custody.>
Michael Matheson

49 In section 36, page 31, line 9, leave out from <a> to <i> in line 10 and insert <the person’s exercise of the right under subsection (1) may be delayed so far as that>.

Michael Matheson

50 In section 36, page 31, line 12, at end insert—

<(  ) A decision to delay the person’s exercise of the right under subsection (1) may be taken only by a constable who—

(a) is of the rank of sergeant or above, and

(b) has not been involved in the investigation in connection with which the person is in custody.>

Group 10: Minor, consequential and drafting amendments

Michael Matheson

43 In section 25, page 23, line 17, leave out <in> and insert <by>

Michael Matheson

51 In section 52A, page 35, line 1, leave out subsection (7) and insert—

<(7) A court or tribunal in civil or criminal proceedings must take the code of practice into account when determining any question arising in the proceedings to which the code is relevant.>

Michael Matheson

54 Leave out section 64

Michael Matheson

55 In section 67, page 41, line 10, leave out <cross-heading> and insert <heading>

Michael Matheson

56 In section 73, page 42, line 36, leave out <not constituted by a stipendiary magistrate> and insert <(however constituted)>

Michael Matheson

57 In section 73, page 42, line 37, leave out leave out from first <a> to <summarily> in line 38 and insert <the sheriff court sitting in summary proceedings>

Michael Matheson

58 In section 73, page 42, line 39, leave out leave out <sitting as a court of solemn jurisdiction> and insert <court sitting in solemn proceedings>

Michael Matheson

59 In section 76, page 44, line 5, leave out <High Court> and insert <Sheriff Appeal Court>
Michael Matheson
60 In section 76, page 44, line 8, leave out <High Court> and insert <Sheriff Appeal Court>

Michael Matheson
61 In section 76, page 44, line 16, leave out <High Court> and insert <Sheriff Appeal Court>

Michael Matheson
62 In section 80, page 45, line 30, leave out <High Court> and insert <Sheriff Appeal Court>

Michael Matheson
63 In section 81, page 46, line 2, leave out subsection (2)

Michael Matheson
64 After section 81, insert—

<Courts reform: spent provisions>

In schedule 3 to the Courts Reform (Scotland) Act 2014, the following provisions are repealed—

(a) in paragraph 10, sub-paragraphs (4), (5) and (8),
(b) paragraph 22,
(c) paragraph 25.>

Michael Matheson
74 In section 86, page 48, line 28, leave out <or other proceedings is> and insert <is or other proceedings are>

Michael Matheson
75 In section 86, page 48, line 33, leave out from <or> to second <be> in line 34 and insert <is or other proceedings are to be held or (as the case may be) any specified hearing is or other proceedings are being>

Michael Matheson
76 In section 86, page 49, line 13, leave out <such a person’s case if such a> and insert <the person’s case if the>

Michael Matheson
78 In schedule A1, page 58, line 9, leave out <or 21> and insert <, 21 or 21A>

Michael Matheson
82 In schedule 1, page 61, line 31, leave out <section 48(5)(b) of> and insert <paragraph 6(5)(b) of schedule A1 to>
Group 11: Questioning following arrest

Michael Matheson

44 In section 26, page 23, line 29, at end insert—

<( ) For the avoidance of doubt, nothing in this section is to be taken to mean that a constable cannot put questions to the person in relation to any other matter.>

Group 12: Power to modify application of Part 1

Michael Matheson

52 In section 53A, page 35, line 27, leave out from second <in> to end of line 28 and insert <under section 1.>

Group 13: Age of criminal responsibility

Alison McInnes

86 After section 56, 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”.>

Alison McInnes

91 In section 90, page 54, line 8, at end insert—

<( ) Section (Age of criminal responsibility) comes into force on the day 18 months after Royal Assent.>

Group 14: Children affected by parental imprisonment

Mary Fee

87 Leave out section 82A
<CHAPTER>

NOTIFICATION IF PARENT OF UNDER-18 IMPRISONED

Child’s named person to be notified

(1) This section applies where a person is admitted to any penal institution for imprisonment or detention arising from—

(a) anything done by a court of criminal jurisdiction (including the imposition of a sentence, the making of an order or the issuing of a warrant),

(b) anything done under section 17 or 17A of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as to the recall of a prisoner),

(c) anything done by virtue of the Extradition Act 2003 (particularly section 9(2) or 77(2) of that Act), or

(d) the operation of any other enactment concerning criminal matters (including penal matters).

(2) The Scottish Ministers must ensure that the person is asked—

(a) whether the person is a parent of a child, and

(b) if the person claims to be a parent of a child, to—

(i) state the identity of the child, and

(ii) give information enabling the identity of the service provider in relation to the child to be ascertained.

(3) If the identity of the service provider can be ascertained by or on behalf of the Scottish Ministers without undue difficulty in light of anything disclosed by the person, they must ensure that the service provider is notified of—

(a) the fact of the person’s admission to the penal institution,

(b) what has been stated by the person about the identity of the child, and

(c) such other matters disclosed by the person as appear to them to be relevant for the purpose of the exercise of the named person functions with respect to the child.

(4) In addition, the Scottish Ministers must ensure that the service provider is notified of anything disclosed by the person about the identity of any other child—

(a) of whom the person claims to be a parent, and

(b) the service provider in relation to whom is unknown to them.

(5) No requirement is imposed by subsection (2) if the person’s admission to the penal institution is on—

(a) returning after—

(i) any unauthorised absence, or

(ii) any temporary release in accordance with prison rules, or

(b) being transferred from—

(i) any other penal institution,

(ii) any secure accommodation in which the person has been kept, or
(iii) any hospital in which the person has been detained, so as to be given medical treatment for a mental disorder, by virtue of Part VI of the 1995 Act or the Mental Health (Care and Treatment) (Scotland) Act 2003.

(6) Each of the requirements imposed by subsections (2) to (4) is to be fulfilled without unnecessary delay.

(7) The references in subsections (2) to (4) to the Scottish Ministers are to them in their exercise of functions in connection with the person’s imprisonment or detention in the penal institution.

(8) The references in subsections (3) and (4) to disclosure by the person are to such disclosure in response to something asked under subsection (2).

Mary Fee

89 After section 82B, insert—

<Definition of certain expressions

In this Chapter—

“child” means a person who is under 18 years of age,

“named person functions” has the meaning given by section 32 of the Children and Young People (Scotland) Act 2014,

“parent” includes any person who—

(a) is a guardian of a child,

(b) is liable to maintain, or has care of, a child, or

(c) has parental responsibilities in relation to a child (as construed by reference to section 1(1) to (3) of the Children (Scotland) Act 1995),

“penal institution” means—

(a) any prison, other than—

(i) a naval, military or air force prison, or

(ii) any legalised police cells (within the meaning of section 14(1) of the Prisons (Scotland) Act 1989),

(b) any remand centre (within the meaning of section 19(1)(a) of the Prisons (Scotland) Act 1989), or

(c) any young offenders institution (within the meaning of section 19(1)(b) of the Prisons (Scotland) Act 1989),

“prison rules” means rules made under section 39 of the Prisons (Scotland) Act 1989,

“secure accommodation” means accommodation provided in a residential establishment, approved in accordance with regulations made under section 78(2) of the Public Services Reform (Scotland) Act 2010, for the purpose of restricting the liberty of children,

“service provider” in relation to a child has the meaning given by section 32 of the Children and Young People (Scotland) Act 2014.>
**Group 15: Support for vulnerable persons: appropriate adult services**

Michael Matheson

65 After section 82B, insert—

<**CHAPTER**

**SUPPORT FOR VULNERABLE PERSONS**

**Meaning of appropriate adult support**

(1) For the purposes of this Chapter, “appropriate adult support” means—

(a) support of the sort mentioned in subsection (3) of section 33 that is provided to a person about whom intimation has been sent under subsection (2) of that section, and

(b) such other support for vulnerable persons in connection with a criminal investigation or criminal proceedings as the Scottish Ministers specify by regulations.

(2) In regulations under subsection (1)(b), the Scottish Ministers may, in particular, specify support by reference to—

(a) the purpose it is to serve,

(b) the description of vulnerable persons to whom it is to be available, and

(c) the circumstances in which it is to be available.

(3) For the purposes of this section—

“vulnerable person” means a person who, owing to mental disorder, is—

(a) unable to understand sufficiently what is happening, or

(b) communicate effectively,

in the context of a criminal investigation or criminal proceedings,

“mental disorder” has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

(4) The Scottish Ministers may by regulations amend the definitions of “vulnerable person” and “mental disorder” in subsection (3) for the purpose of making them consistent with (respectively) subsections (1)(c) and (5)(a) of section 33.>

Michael Matheson

66 After section 82B, insert—

<**Responsibility for ensuring availability of appropriate adults**

The Scottish Ministers may by regulations—

(a) confer on a person the function of ensuring that people are available to provide appropriate adult support—

(i) throughout Scotland, or

(ii) in a particular part of Scotland, and

(b) make provision about how that function may or must be discharged.>
Michael Matheson

67 After section 82B, insert—

<Assessment of quality of appropriate adult support>

The Scottish Ministers may by regulations—

(a) confer on a person the functions of—

   (i) assessing the quality of whatever arrangements may be in place to ensure that people are available to provide appropriate adult support, and
   
   (ii) assessing the quality of any appropriate adult support that is provided, and

(b) make provision about how those functions may or must be discharged.>

Michael Matheson

68 After section 82B, insert—

<Training for appropriate adults>

The Scottish Ministers may by regulations—

(a) confer on a person the function of—

   (i) giving to people who provide, or wish to provide, appropriate adult support training in how to provide that support,

   (ii) giving to other people specified by the Scottish Ministers in the regulations training in how to deal with people who need appropriate adult support, and

(b) make provision about how that function may or must be discharged.>

Michael Matheson

69 After section 82B, insert—

<Recommendations from quality assessor and training provider>

(1) A person upon whom a function has been conferred by virtue of section (Assessment of quality of appropriate adult support) or (Training for appropriate adults) may—

   (a) make to a provider of appropriate adult support recommendations about the way that appropriate adult support is provided,

   (b) make to the Scottish Ministers recommendations about the exercise of their powers under section 53B and the provisions of this Chapter.

(2) A provider of appropriate adult support must have regard to any recommendation made to it under subsection (1)(a).

(3) The Scottish Ministers must have regard to any recommendation made under subsection (1)(b).

(4) In this section, “a provider of appropriate adult support” means a person upon whom the function of ensuring that people are available to provide appropriate adult support has been conferred by virtue of section (Responsibility for ensuring availability of appropriate adults).>
After section 82B, insert—

**<Duty to ensure quality assessment takes place**

If, by virtue of regulations under section (*Responsibility for ensuring availability of appropriate adults*), a person has the function of ensuring that people are available to provide appropriate adult support, it is the Scottish Ministers’ duty to ensure that there is a person discharging the functions mentioned in section (*Assessment of quality of appropriate adult support*) (a).>

**<Elaboration of regulation-making powers under this Chapter**

(1) A power under this Chapter to confer a function on a person by regulations may be exercised so as to confer the function, or aspects of the function, on more than one person.

(2) A power under this Chapter to make provision by regulations about how a function may or must be discharged may, in particular, be exercised so as to—

   (a) require or allow the person discharging the function to enter into a contract with another person,

   (b) require the person discharging the function to have regard to any guidance about the discharge of the function issued by the Scottish Ministers.

(3) The powers under this Chapter to make regulations may be exercised so as to—

   (a) make such provision as the Scottish Ministers consider necessary or expedient in consequence of, or for the purpose of giving full effect to, any regulations made in exercise of a power under this Chapter,

   (b) modify any enactment (including this Act),

   (c) make different provision for different purposes.>

**<Procedure for making regulations under this Chapter**

(1) Regulations under this Chapter are subject to the affirmative procedure.

(2) Prior to laying a draft Scottish statutory instrument containing regulations under this Chapter before the Scottish Parliament for approval by resolution, the Scottish Ministers must consult publicly.>

**<Other powers of Ministers unaffected**

Nothing in this Chapter is to be taken to imply that the powers it gives to the Scottish Ministers to confer functions are the only powers that they have to confer those (or similar) functions.>
<CHAPTER>

RECOVERY OF DOCUMENTS IN SEXUAL OFFENCE CASES: LEGAL REPRESENTATION

Recovery of certain documents in sexual offence cases: legal representation

In section 301A (recovery of documents) of the 1995 Act, after subsection (4), insert—

“(4A) Subsection (4B) applies where the application for an order under subsection (1)—

(a) is made in connection with the trial of a person charged with an offence to which section 288C of this Act applies, and

(b) seeks the recovery of any psychiatric, psychological or medical records of the complainer.

(4B) Before such an order is granted, the court must ensure that the complainer—

(a) is informed of the right of the complainer—

(i) to seek legal advice,

(ii) to appoint a legal representative, and

(b) is given the opportunity—

(i) to seek such advice,

(ii) to appoint such a representative.

(4C) 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,

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

(4D) The Scottish Ministers must by regulations make provision for fees incurred by a legal representative appointed under subsection (4B) to be paid out of the Scottish Legal Aid Fund.

(4E) In subsections (4A) to (4C), “complainer” means the person against whom the offence which is the subject of the criminal proceedings to which the application for an order under subsection (1) relates is alleged to have been committed.”.>