

Criminal Justice and Licensing (Scotland) Bill

1st Groupings of Amendments for Stage 2

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

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

Groupings of amendments

Purposes and principles of sentencing

26, 27, 28, 29, 30, 31, 32, 37, 38

Circumstances in which courts not to have regard to purposes and principles

33, 34, 35, 36

Relationship between section 1 and other law

39, 40, 54

Scottish Sentencing Council – composition (general)

41, 42, 43, 44, 45, 46, 47, 48, 15

Scottish Sentencing Council – case for judicial majority

12, 13, 14

Scottish Sentencing Council – members (appointment, term of office)

49, 50

Sentencing guidelines – role of judiciary in approval and publication

51, 53, 16, 18, 18A, 18B, 57, 58, 19, 59, 20, 61, 66, 22, 68, 70, 23, 75

Notes on amendments in this group

Amendment 53 pre-empts amendment 16

Amendment 58 pre-empts amendment 19

Amendment 70 pre-empts amendment 23

Scottish Sentencing Council – objectives

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Sentencing guidelines – application to young people

394

Assessments to accompany sentencing guidelines

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Dates on which sentencing guidelines to take effect

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Relationship with existing power of High Court to issue sentencing guidelines

60, 71, 72, 76

Consultation on draft sentencing guidelines

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Effect of sentencing guidelines

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Ministers' power to request Council to prepare or review guidelines

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Scottish Sentencing Council – power to provide information, advice etc.

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Consultation on Scottish Sentencing Council's business plan

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Community payback orders (and requirements under CPOs) to be imposed on offenders

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Purpose of community payback orders

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Title of "supervision requirement"

78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97

Notes on amendments in this group

Amendment 79 is pre-empted by amendment 204 in the group "Conduct requirements"

Amendment 83 is pre-empted by amendment 236, also in that group

Amendments 85, 86 and 87 are pre-empted by amendment 239 in the group "Compensation requirements"

Compensation requirements

200, 206, 235, 239, 286, 290, 327

Notes on amendments in this group

Amendment 239 pre-empts amendments 85, 86 and 87 in the previous group

Conduct requirements

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Notes on amendments in this group

Amendments 204 and 236 pre-empt, respectively, amendments 79 and 83 in group
“Title of “supervision requirement””

Supervision requirements

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Community payback orders – special provision for level 1 unpaid work or other activity requirements

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Community payback orders – payment of offenders’ expenses

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Community payback orders – unpaid work or other activity requirement

240, 241, 398, 242, 244, 245, 246, 247, 248, 249, 250, 251, 255, 256, 261, 262, 263, 264, 266, 285, 288, 289

Community payback orders – fine defaulters

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Community payback orders – drug treatment requirement

274

Community payback orders – commencement and standards

276

Community payback orders – progress reviews

278, 279

Community payback orders – revocation, variation and discharge, including where CPO breached

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Notes on amendments in this group

Amendment 323 pre-empts amendment 96 in the group “Title of “supervision requirement””

Community payback orders – restricted movement requirement

328, 329, 330, 331, 332, 333, 334, 335

Unpaid work and other activity requirement – consultation

98

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99

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342, 343

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399, 400, 401, 402, 378

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5, 6, 7

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100, 101, 388, 1, 391, 392, 393

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103

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104

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105, 184

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344, 345, 346, 347, 348, 349, 350, 351, 358

Notes on amendments in this group

Amendment 347 pre-empts amendment 348

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352

Directing serious organised crime

353, 354, 355, 356

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357, 106, 359, 360

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107, 108

Clarification of existing offence prohibiting the carrying of offensive weapons

109

Offence of having article with blade or point (or offensive weapon) on workplace premises

11

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361, 362, 363, 364, 366

Extreme pornography – excluded images

365, 367, 368, 369

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110

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111

Penalties for offences of brothel-keeping and living on the earnings of prostitution

370

Engaging in, advertising and facilitating paid-for sexual activities

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People trafficking (and consequential provision)

371, 372, 373, 374, 375, 376, 377, 386, 387

Slavery, servitude and forced or compulsory labour

112, 143

Articles for use in fraud

113

Abolition of offences of sedition and leasing-making

114, 189, 192, 194, 196

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403

Bail conditions – remote monitoring requirements

132, 197

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404, 405, 406, 407, 408

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409, 410, 380, 381, 411, 382, 412

Notes on amendments in this group

Amendment 410 pre-empts amendment 380

Amendment 411 pre-empts amendment 382

Scottish Criminal Cases Review Commission – grounds for appeal

133, 134, 135

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383

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136, 137

Closure of premises associated with human exploitation etc. (minor corrections etc.)

138, 139, 140, 141, 142, 144, 198

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147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166

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24, 167, 195

Conditions to which licences under the 1982 Act are to be subject

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Licensing – powers of entry etc. (definition of “authorised civilian employee”)

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Licensing of metal dealers

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Licensing of street trading – food hygiene certificates

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Licensing of market operators

171, 172, 2, 3, 4

Notes on amendments in this group

Amendment 172 pre-empts amendments 2 and 3

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173

Provisions to be considered as part of the Alcohol (Scotland) Bill

174, 182, 186

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Orders and regulations – circumstances in which affirmative procedure required

187, 188

Incest and related offences

190

Criminal law – revision

191, 193

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Amendments in debating order

Purposes and principles of sentencing

Robert Brown

- 26 In section 1, page 1, line 10, after <The> insert <primary purposes of sentencing are—
(a) fairness, and
(b) justice.
() The other>

Robert Brown

- 27 In section 1, page 1, line 10, leave out <are> and insert <include>

Robert Brown

- 28 In section 1, page 1, line 15, at end insert—
<() The primary principle of sentencing is proportionality, that is to say, imposing the least oppressive sentence that is consistent with securing the purposes mentioned in subsection (1)(b) and (d).>

Robert Brown

- 29 In section 1, page 1, line 20, after <seriousness> insert <, nature and character>

Robert Brown

- 30 In section 1, page 1, line 25, at end insert—
<() whether the offender pled guilty to the offence and, if so, at what stage of proceedings the plea was entered or guilt otherwise acknowledged,>

Robert Brown

- 31 In section 1, page 1, line 25, at end insert—
<() whether the offender was aged under 21 at the time of the offence,>

Aileen Campbell

- 32 In section 1, page 2, line 8, after <circumstances> insert <(including any responsibilities the offender has for the care of children or dependent adults)>

Kenny MacAskill

- 37 In section 1, page 2, line 20, at end insert—
<() The matters to which a court must have regard under subsection (3) in sentencing an offender in respect of an offence are referred to in this Part as the “principles of sentencing”.>

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Robert Brown
Supported by: Bill Aitken

38 Leave out section 1

Circumstances in which courts not to have regard to purposes and principles

Robert Brown

33 In section 1, page 2, leave out line 12

Robert Brown

34 In section 1, page 2, leave out lines 13 and 14

Kenny MacAskill

35 In section 1, page 2, line 15, at end insert—

- <() an interim compulsion order under section 53 of the 1995 Act,
- () a supervision and treatment order under section 57(2)(d) of, and Schedule 4 to, that Act,>

Kenny MacAskill

36 In section 1, page 2, line 16, leave out <the 1995> and insert <that>

Relationship between section 1 and other law

Robert Brown

39 In section 2, page 2, line 30, leave out subsection (2)

Robert Brown
Supported by: Bill Aitken

40 Leave out section 2

Robert Brown

54 In section 5, page 3, line 14, at end insert—

- <() Sentencing guidelines must be consistent with the purposes and principles of sentencing.>

Scottish Sentencing Council – composition (general)

Kenny MacAskill

41 In schedule 1, page 140, leave out line 11 and insert—

- <() one person holding the office of sheriff (other than a sheriff principal),>

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Bill Aitken

- 42 In schedule 1, page 140, line 12, leave out <or> and insert <, and
() one person holding the office of>

Kenny MacAskill

- 43 In schedule 1, page 140, line 12, at end insert <, and
() one other person holding—
(i) any of the offices mentioned in paragraphs (a) to (c), or
(ii) the office of sheriff principal.>

Bill Aitken

- 44 In schedule 1, page 140, leave out line 14

Bill Aitken

- 45 In schedule 1, page 140, line 16, after <prosecutor> insert <within the meaning of section 307 of the 1995 Act>

Bill Aitken

- 46 In schedule 1, page 140, line 18, after <is> insert <such>

Kenny MacAskill

- 47 In schedule 1, page 140, line 19, at end insert—
<() one constable,>

Robert Brown

- 48 In schedule 1, page 140, line 21, after <crime,> insert—
<() one member of a community justice authority,
() one person nominated by the Scottish Prison Service to represent its views and interests,>

Bill Butler

- 15 In schedule 1, page 140, line 23, at end insert—
<() Of the judicial members appointed under paragraph 1(3)(b) and (c) above, at least one must be a sheriff and at least one must be a justice of the peace.>

Scottish Sentencing Council – case for judicial majority

Bill Butler

- 12 In schedule 1, page 140, line 12, leave out <one person> and insert <two persons>

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Bill Butler

Supported by: Kenny MacAskill

- 13 In schedule 1, page 140, leave out line 15

Bill Butler

Supported by: Bill Aitken

- 14 In schedule 1, page 140, line 22, leave out <two other persons neither of whom is> and insert <one other person who is not>

Scottish Sentencing Council – members (appointment, term of office)

Bill Aitken

- 49 In schedule 1, page 140, line 27, leave out <after consulting> and insert <with the approval of>

Kenny MacAskill

- 50 In schedule 1, page 141, line 19, at end insert—
<() In this paragraph, “a member” means a member appointed by the Lord Justice General or the Scottish Ministers.>

Sentencing guidelines – role of judiciary in approval and publication

Kenny MacAskill

- 51 In schedule 1, page 142, line 24, leave out <preparing and publishing sentencing guidelines> and insert <submitting sentencing guidelines to the High Court of Justiciary for approval>

Kenny MacAskill

- 53 In section 5, page 3, line 12, leave out subsection (1) and insert—
<() The Council is from time to time to prepare, for the approval of the High Court of Justiciary, guidelines relating to the sentencing of offenders.>

Bill Butler

- 16 In section 5, page 3, line 12, leave out <and publish> and insert <for the approval of the Lord Justice General>

Bill Butler

- 18 In section 5, page 3, line 32, at end insert—
<(7A) The Lord Justice General, on receipt of guidelines prepared under subsection (1), must—
(a) refer the guidelines to such other Lords Commissioner of Justiciary as the Lord Justice General considers appropriate, inviting their comments,

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(b) having taken account of any comments made by virtue of paragraph (a), either—

(i) approve the guidelines, or

(ii) refer the guidelines back to the Council for further consideration, giving reasons for so doing.

(7B) Where the Lord Justice General approves guidelines under subsection (7A)(b)(i), the Council must publish them.

(7C) Where guidelines are referred back to the Council under subsection (7A)(b)(ii), the Council must review the guidelines and, taking account of the reasons given for the reference, prepare revised guidelines for the approval of the Lord Justice General; and subsection (7A) applies to revised guidelines prepared under this subsection as it applies to guidelines prepared under subsection (1).>

Robert Brown

18A As an amendment to amendment 18, line 7, after <guidelines> insert <with or without amendments>

Robert Brown

18B As an amendment to amendment 18, line 11, leave out <Council must publish them> and insert <Clerk of Justiciary must publish them, as approved, under the authority of the High Court>

Robert Brown

57 In section 5, page 3, line 34, leave out <by it> and insert <under the authority of the High Court>

Kenny MacAskill

58 In section 5, page 3, line 35, leave out <publish revised guidelines> and insert <prepare, for the approval of the High Court of Justiciary, revised guidelines>

Bill Butler

19 In section 5, page 3, line 35, leave out <publish> and insert <prepare for the approval of the Lord Justice General>

Kenny MacAskill

59 In section 5, page 3, line 36, leave out subsection (9) and insert—

<() In this section and sections 6 to 13, references to sentencing guidelines include references to revised sentencing guidelines.>

Bill Butler

20 In section 6, page 4, line 2, leave out <before publishing> and insert <in preparing for the approval of the Lord Justice General>

Kenny MacAskill

61 In section 6, page 4, line 2, leave out from <publishing> to <guidelines> in line 3 and insert <submitting any sentencing guidelines to the High Court of Justiciary for approval>

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Kenny MacAskill

- 66** In section 6, page 4, line 10, leave out <sentencing guidelines or revised sentencing guidelines> and insert <guidelines and assessments for submission to the High Court of Justiciary>

Bill Butler

- 22** In section 6, page 4, line 11, after <guidelines> insert <for approval by the Lord Justice General>

Kenny MacAskill

- 68** After section 6, insert—

<Approval of sentencing guidelines by High Court

- (1) Sentencing guidelines have no effect unless approved by the High Court of Justiciary.
- (2) On submitting sentencing guidelines to the High Court for approval, the Council must also provide the High Court with the assessments referred to in section 5(5).
- (3) Where the Council submits sentencing guidelines to the High Court for approval, the Court may—
 - (a) approve the proposed guidelines—
 - (i) in whole or in part,
 - (ii) with or without modifications, or
 - (b) reject the proposed guidelines, in whole or in part.
- (4) Where the High Court—
 - (a) rejects any of the proposed guidelines, or
 - (b) modifies any of them,the Court must state its reasons for doing so.
- (5) Sentencing guidelines approved by the High Court take effect on such date as the Court may determine.
- (6) Different dates may be determined in relation to—
 - (a) different provisions of the guidelines, or
 - (b) different purposes.
- (7) As soon as possible after the approval of sentencing guidelines by the High Court, the Council must publish—
 - (a) the guidelines as approved (including the date on which they take effect), and
 - (b) the assessments referred to in section 5(5) (revised as necessary to take account of any modifications of the guidelines prior to their approval).
- (8) The guidelines and assessments are to be published in such manner as the Council considers appropriate.>

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Kenny MacAskill

- 70 In section 8, page 5, line 10, leave out from <publishing> to end of line 11 and insert—
- <() preparing, for the approval of the High Court of Justiciary, sentencing guidelines on any matter, or
 - () reviewing any sentencing guidelines published by the Council.>

Bill Butler

- 23 In section 8, page 5, line 10, leave out <publishing> and insert <preparing for the approval of the Lord Justice General>

Kenny MacAskill

- 75 In section 13, page 7, line 26, at end insert—
- <() any sentencing guidelines submitted during the year to the High Court of Justiciary for approval and of the Court's response to them,>

Scottish Sentencing Council – objectives

Robert Brown

- 52 In section 4, page 3, line 10, at end insert—
- () promote the effectiveness and optimum use of—
 - (i) sentences of imprisonment or detention, and
 - (ii) non-custodial sentences,by reference to the purposes and principles of sentencing>

Sentencing guidelines – application to young people

Angela Constance

- 394 In section 5, page 3, line 14, at end insert—
- <() Sentencing guidelines must in particular relate to the sentencing of offenders aged under 18 at the time of the offence, including the circumstances in which it would be appropriate to refer such offenders to a children's hearing.>

Assessments to accompany sentencing guidelines

Kenny MacAskill

- 55 In section 5, page 3, line 23, leave out <include in any sentencing guidelines> and insert <, on preparing any sentencing guidelines, also prepare>

Bill Butler

- 17 In section 5, page 3, leave out lines 27 and 28

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Kenny MacAskill

- 62 In section 6, page 4, line 4, after <guidelines> insert <together with a draft of the assessments referred to in section 5(5)>

Kenny MacAskill

- 63 In section 6, page 4, line 5, leave out <draft> and insert <drafts>

Kenny MacAskill

- 65 In section 6, page 4, line 9, leave out subsection (2)

Kenny MacAskill

- 67 In section 6, page 4, line 11, leave out <draft> and insert <drafts>

Dates on which sentencing guidelines to take effect

Robert Brown

Supported by: Kenny MacAskill

- 56 In section 5, page 3, line 30, leave out subsections (6) and (7)

Relationship with existing power of High Court to issue sentencing guidelines

Robert Brown

- 60 In section 5, page 3, line 36, at end insert—
- <() This section is without prejudice to the power of the High Court to pronounce an opinion on the sentence that is appropriate in certain types of case under section 118(7) or 189(7) of the 1995 Act.>

Kenny MacAskill

- 71 Leave out section 9 and insert—
- <High Court's power to require preparation or review of sentencing guidelines**
- (1) Where the High Court of Justiciary pronounces an opinion under section 118(7) or 189(7) of the 1995 Act, the Court may require the Council to—
 - (a) prepare, for the Court's approval, sentencing guidelines on any matter, or
 - (b) review any sentencing guidelines published by the Council on any matter.
 - (2) On making a requirement under subsection (1), the High Court must state its reasons for doing so.
 - (3) The Council must comply with a requirement made under subsection (1) and, in doing so, must have regard to the High Court's reasons for making the requirement.>

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Kenny MacAskill

72 After section 9, insert—

<Publication of High Court guideline judgments

- (1) The Council must publish the opinions of the High Court of Justiciary pronounced under section 118(7) or 189(7) of the 1995 Act.
- (2) As soon as possible after the High Court pronounces such an opinion, the Scottish Court Service must provide the Council with a copy of the opinion.
- (3) The copy opinion is to be provided in such form and by such means as the Council may require.
- (4) The opinions are to be published in such manner, and at such times, as the Council considers appropriate.
- (5) This section does not affect any power or responsibility of the Scottish Court Service in relation to the publication of opinions of the High Court.>

Kenny MacAskill

76 In section 13, page 7, line 30, leave out <references made by the High Court of Justiciary under section 9> and insert <requirements made by the High Court of Justiciary under section (*High Court's power to require preparation or review of sentencing guidelines*)>

Consultation on draft sentencing guidelines

Robert Brown

64 In section 6, page 4, line 5, at end insert—

<() the Lord Justice General (who may, in turn, consult other Lords Commissioner of Justiciary),>

Bill Butler

21 In section 6, page 4, line 7, at end insert—

<() any committee of the Scottish Parliament for the time being established under the Parliament's standing orders with a remit that includes the criminal justice system,>

Angela Constance

395 In section 6, page 4, line 7, at end insert—

<() persons aged under 18 who have been victims of offences relevant to the proposed guidelines, and bodies providing support to such persons,>

Angela Constance

396 In section 6, page 4, line 8, after <persons> insert <and bodies>

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Effect of sentencing guidelines

Kenny MacAskill

- 69 In section 7, page 4, line 19, after <guidelines,> insert <or to depart from them in accordance with provision contained in them under section 5(3)(d),>

Ministers' power to request Council to prepare or review guidelines

Angela Constance

- 397 In section 8, page 5, line 10, after <may> insert <, after consulting such persons and bodies as they consider appropriate,>

Scottish Sentencing Council – power to provide information, advice etc.

Robert Brown

- 73 In section 11, page 6, line 17, leave out subsections (2) and (3)

Consultation on Scottish Sentencing Council's business plan

Robert Brown

- 74 In section 12, page 7, line 5, at end insert—
<() the Lord Justice General (who may, in turn, consult other Lords Commissioner of Justiciary),>

Community payback orders (and requirements under CPOs) to be imposed on offenders

Kenny MacAskill

- 199 In section 14, page 8, line 8, leave out <in respect of> and insert <on>

Kenny MacAskill

- 202 In section 14, page 8, line 23, leave out <in respect of> and insert <on>

Kenny MacAskill

- 205 In section 14, page 8, line 27, leave out from <impose> to <imposes> in line 28 and insert <only impose a community payback order imposing>

Kenny MacAskill

- 208 In section 14, page 8, line 33, leave out <making> and insert <imposing>

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Kenny MacAskill

209 In section 14, page 8, line 37, leave out <in> and insert <by>

Kenny MacAskill

212 In section 14, page 9, line 11, leave out <in respect of> and insert <on>

Kenny MacAskill

215 In section 14, page 9, line 28, leave out <make> and insert <impose>

Kenny MacAskill

217 In section 14, page 9, line 35, leave out <in respect of> and insert <on>

Kenny MacAskill

221 In section 14, page 10, line 18, leave out <in respect of> and insert <on>

Kenny MacAskill

225 In section 14, page 11, line 2, leave out <in respect of> and insert <on>

Kenny MacAskill

226 In section 14, page 11, line 6, leave out <in respect of> and insert <on>

Kenny MacAskill

228 In section 14, page 11, line 11, leave out <in respect of> and insert <on>

Kenny MacAskill

229 In section 14, page 11, line 13, leave out <imposing the community payback order>

Kenny MacAskill

230 In section 14, page 11, line 20, leave out <imposing the community payback order>

Kenny MacAskill

231 In section 14, page 11, line 28, leave out <An order imposing a> and insert <A>

Kenny MacAskill

232 In section 14, page 11, line 31, leave out <in respect of> and insert <on>

Kenny MacAskill

257 In section 14, page 15, line 11, leave out <in respect of> and insert <on>

Kenny MacAskill

260 In section 14, page 15, line 29, leave out <in respect of> and insert <on>

Kenny MacAskill

277 In section 14, page 21, line 16, leave out <in respect of> and insert <on>

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Kenny MacAskill

280 In section 14, page 22, line 2, leave out <in respect of> and insert <on>

Kenny MacAskill

291 In section 14, page 22, line 28, leave out <in> and insert <by>

Kenny MacAskill

295 In section 14, page 23, line 5, leave out <in respect of> and insert <imposed on>

Kenny MacAskill

299 In section 14, page 23, line 31, leave out <in> and insert <by>

Kenny MacAskill

300 In section 14, page 23, line 32, leave out <made> and insert <imposed>

Kenny MacAskill

301 In section 14, page 23, line 36, leave out <in> and insert <by>

Kenny MacAskill

302 In section 14, page 23, line 36, leave out <made> and insert <imposed>

Kenny MacAskill

304 In section 14, page 23, line 39, leave out second <in> and insert <by>

Kenny MacAskill

305 In section 14, page 23, line 40, leave out <made> and insert <imposed>

Kenny MacAskill

307 In section 14, page 24, line 3, leave out <in respect of> and insert <on>

Kenny MacAskill

308 In section 14, page 24, line 3, leave out <is in force> and insert <has been imposed>

Kenny MacAskill

312 In section 14, page 24, line 21, leave out <in respect of> and insert <on>

Kenny MacAskill

313 In section 14, page 24, line 22, leave out <in> and insert <by>

Kenny MacAskill

336 In section 14, page 27, line 34, leave out <in respect of> and insert <on>

Kenny MacAskill

338 In section 14, page 28, line 24, leave out <in respect of> and insert <on>

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Kenny MacAskill

339 In section 14, page 29, line 5, leave out <in respect of> and insert <on>

Kenny MacAskill

340 In section 14, page 29, line 23, leave out <(1)(b)> and insert <(1)>

Kenny MacAskill

341 In section 14, page 29, line 24, leave out <the order imposing>

Purpose of community payback orders

Robert Brown

77 In section 14, page 8, line 8, at end insert—

<() The purpose of a community payback order is to punish an offender in a way that—

(a) helps to pay back to the community adversely affected by the conduct of the offender, and

(b) supports the offender in addressing the behaviour or circumstances that have contributed to that conduct.>

Title of “supervision requirement”

Robert Brown

78 In section 14, page 8, line 11, leave out <a> and insert <an offender>

Robert Brown

79 In section 14, page 8, line 26, leave out second <a> and insert <an offender>

Robert Brown

80 In section 14, page 8, line 29, leave out <a> and insert <an offender>

Robert Brown

81 In section 14, page 12, line 3, leave out <a “supervision> and insert <an “offender supervision>

Robert Brown

82 In section 14, page 12, line 8, leave out second <a> and insert <an offender>

Robert Brown

83 In section 14, page 12, line 19, leave out <a> and insert <an offender>

THIS IS NOT THE MARSHALLED LIST

Robert Brown

84 In section 14, page 12, line 22, leave out <a> and insert <an offender>

Robert Brown

85 In section 14, page 12, line 26, leave out <a> and insert <an offender>

Robert Brown

86* In section 14, page 12, line 38, after second <the> insert <offender>

Robert Brown

87 In section 14, page 12, line 40, after second <the> insert <offender>

Robert Brown

88 In section 14, page 16, line 33, after first <the> insert <offender>

Robert Brown

89 In section 14, page 17, line 10, after third <the> insert <offender>

Robert Brown

90 In section 14, page 18, line 12, after third <the> insert <offender>

Robert Brown

91 In section 14, page 20, line 7, after third <the> insert <offender>

Robert Brown

92 In section 14, page 21, line 1, after third <the> insert <offender>

Robert Brown

93 In section 14, page 22, line 19, leave out first <a> and insert <an offender>

Robert Brown

94 In section 14, page 25, line 2, leave out first <a> and insert <an offender>

Robert Brown

95 In section 14, page 25, line 2, leave out second <a> and insert <an offender>

Robert Brown

96 In section 14, page 25, line 10, after second <the> insert <offender>

Robert Brown

97 In section 14, page 25, line 36, leave out second <a> and insert <an offender>

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Compensation requirements

Kenny MacAskill

- 200** In section 14, page 8, line 11, at end insert—
<() a compensation requirement,>

Kenny MacAskill

- 206** In section 14, page 8, line 29, at end insert—
<() a compensation requirement,>

Kenny MacAskill

- 235** In section 14, page 12, line 13, at end insert—
<(zi) a compensation requirement,>

Kenny MacAskill

- 239** In section 14, page 12, leave out lines 24 to 41 and insert—
<Compensation requirement

227H Compensation requirement

- (1) In this Act, a “compensation requirement” is, in relation to an offender, a requirement that the offender must pay compensation for any relevant matter in favour of a relevant person.
- (2) In subsection (1)—
“relevant matter” means any personal injury, loss, damage or other matter in respect of which a compensation order could be made against the offender under section 249 of this Act, and
“relevant person” means a person in whose favour the compensation could be awarded by such a compensation order.
- (3) A compensation requirement may require the compensation to be paid in a lump sum or in instalments.
- (4) The offender must complete payment of the compensation before the earlier of the following—
 - (a) the end of the period of 18 months beginning with the day on which the compensation requirement is imposed,
 - (b) the beginning of the period of 2 months ending with the day on which the supervision requirement imposed under section 227G(2) ends.
- (5) The following provisions of this Act apply in relation to a compensation requirement as they apply in relation to a compensation order, and as if the references in them to a compensation order included a compensation requirement—
 - (a) section 249(3), (4), (5) and (8) to (10),
 - (b) section 250(2),
 - (c) section 251(1), (1A) and (2)(b), and

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(d) section 253.>

Kenny MacAskill

286 In section 14, page 22, line 19, leave out from <supervision> to <227H> in line 20 and insert <compensation requirement>

Kenny MacAskill

290 In section 14, page 22, line 27, at end insert—

<() The court may not, under subsection (4)(c), increase the amount of compensation beyond the maximum that could have been awarded at the time the requirement was imposed.>

Kenny MacAskill

327 In section 14, page 25, line 37, leave out from <supervision> to end of line 38 and insert <compensation requirement.>

Conduct requirements

Kenny MacAskill

201 In section 14, page 8, line 17, at end insert—

<() a conduct requirement.>

Kenny MacAskill

204 In section 14, page 8, line 25, leave out from second <or> to end of line 26 and insert—

<() a conduct requirement.>

Kenny MacAskill

207 In section 14, page 8, line 31, at end insert—

<() a conduct requirement.>

Kenny MacAskill

236 In section 14, page 12, leave out lines 19 and 20 and insert—

<() a conduct requirement.>

Kenny MacAskill

275 In section 14, page 21, line 13, at end insert—

<Conduct requirement

227VA Conduct requirement

- (1) In this Act, a “conduct requirement” is, in relation to an offender, a requirement that the offender must, during the specified period, do or refrain from doing specified things.
- (2) A court may impose a conduct requirement on an offender only if the court is satisfied that the requirement is necessary with a view to—

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- (a) securing or promoting good behaviour by the offender, or
- (b) preventing further offending by the offender.
- (3) The specified period must be not more than 3 years.
- (4) The specified things must not include anything that—
 - (a) could be required by imposing one of the other requirements listed in section 227A(2), or
 - (b) would be inconsistent with the provisions of this Act relating to such other requirements.
- (5) In this section, “specified”, in relation to a conduct requirement, means specified in the requirement.>

Supervision requirements

Kenny MacAskill

- 203** In section 14, page 8, line 24, at end insert—
<() a supervision requirement,>

Kenny MacAskill

- 234** In section 14, page 12, line 10, leave out from <and> to end of line 12 and insert <at the time the order is imposed,>

Kenny MacAskill

- 237** In section 14, page 12, line 21, at end insert—
<(3A) Subsection (3) is subject to subsection (3B) and section 227ZB(7B).
(3B) In the case of a supervision requirement imposed on a person aged 16 or 17 along with only a level 1 unpaid work or other activity requirement, the specified period must be no more than whichever is the greater of—
(a) the specified period under section 227L in relation to the level 1 unpaid work or other activity requirement, and
(b) 3 months.>

Kenny MacAskill

- 238** In section 14, page 12, line 22, leave out from <the> to end of line 23 and insert <“specified”, in relation to a supervision requirement, means specified in the requirement.>

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Community payback orders – definitions

Kenny MacAskill

- 210** In section 14, page 9, line 4, after <section> insert <and sections 227B to 227ZI, except where the context requires otherwise>

Kenny MacAskill

- 211** In section 14, page 9, leave out lines 7 and 8

Community payback orders – local authority (responsible officer and reports on offenders)

Kenny MacAskill

- 213** In section 14, page 9, line 13, leave out from <such> to end of line 14 and insert <information about the offender and the offender’s circumstances.

- () An Act of Adjournal may prescribe—
 - (a) the form of a report under subsection (2), and
 - (b) the particular information to be contained in it.>

Kenny MacAskill

- 214** In section 14, page 9, line 14, at end insert—
- <() Subsection (2) does not apply where the court is considering imposing a community payback order—
 - (a) imposing only a level 1 unpaid work or other activity requirement, or
 - (b) under section 227M(2).>

Kenny MacAskill

- 218** In section 14, page 10, line 2, leave out <five> and insert <two>

Kenny MacAskill

- 219** In section 14, page 10, line 7, leave out from <and> to end of line 10 and insert—
- <() require the offender to report to the responsible officer in accordance with instructions given by that officer,
 - () require the offender to notify the responsible officer without delay of—
 - (i) any change of the offender’s address, and
 - (ii) the times, if any, at which the offender usually works (or carries out voluntary work) or attends school or any other educational establishment, and

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- () where the order imposes an unpaid work or other activity requirement, require the offender to undertake for the number of hours specified in the requirement such work or activity as the responsible officer may instruct, and at such times as may be so instructed.>

Kenny MacAskill

- 220 In section 14, page 10, line 16, leave out <or discharge any of them> and insert <, revoke or discharge the order>

Kenny MacAskill

- 222 In section 14, page 10, line 20, leave out <five> and insert <two>

Kenny MacAskill

- 223 In section 14, page 10, line 21, leave out <Saturdays and Sundays> and insert <a Saturday or Sunday or any day which is a local or public holiday>

Kenny MacAskill

- 224 In section 14, page 10, leave out lines 22 to 39

Kenny MacAskill

- 267 In section 14, page 16, line 14, at end insert—
<() Rules under subsection (1) may—
(a) confer functions on responsible officers,
(b) contain rules about the way responsible officers are to exercise functions under this Act.>

Kenny MacAskill

- 296 In section 14, page 23, line 7, leave out from <such> to end of line 8 and insert <information about the offender and the offender's circumstances.
() An Act of Adjournal may prescribe—
(a) the form of a report under subsection (2), and
(b) the particular information to be contained in it.>

Kenny MacAskill

- 337 In section 14, page 28, line 19, after <person> insert <and to the responsible officer>

Community payback orders – special provision for level 1 unpaid work or other activity requirements

Kenny MacAskill

- 216 In section 14, page 9, line 33, leave out <is subject to section 227M(7)> and insert <does not apply where the court is considering imposing a community payback order under section 227M(2)>

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Kenny MacAskill

- 243** In section 14, page 13, line 33, at end insert—
- <() Subsection (2) does not apply where the court is considering imposing a community payback order—
 - (a) imposing only a level 1 unpaid work or other activity requirement, or
 - (b) under section 227M(2).>

Kenny MacAskill

- 254** In section 14, page 15, line 3, at end insert—
- <() The court, in imposing a community payback order under subsection (2) on a person aged 16 or 17, must also impose a supervision requirement.>

Kenny MacAskill

- 259** In section 14, page 15, leave out lines 21 and 22

Kenny MacAskill

- 297** In section 14, page 23, line 8, at end insert—
- <() Subsection (2) does not apply where the court is considering varying a community payback order—
 - (a) which imposes only a level 1 unpaid work or other activity requirement, or
 - (b) imposed under section 227M(2).>

Community payback orders – alternative disposals available to court

Kenny MacAskill

- 227** In section 14, page 11, line 7, leave out from <from> to end of line 10 and insert <imposing a fine or any other sentence (other than imprisonment), or making any other order, that it would be entitled to impose or make in respect of the offence.>

Community payback orders – payment of offenders' expenses

Kenny MacAskill

- 233** In section 14, page 11, line 39, at end insert—
- <**227FA** **Payment of offenders' travelling and other expenses**
 - (1) The Scottish Ministers may by order made by statutory instrument provide for the payment to offenders of travelling or other expenses in connection with their compliance with requirements imposed on them by community payback orders.

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- (2) An order under subsection (1) may—
 - (a) specify expenses or provide for them to be determined under the order,
 - (b) provide for the payments to be made by or on behalf of local authorities,
 - (c) make different provision for different purposes.
- (3) An order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.>

Kenny MacAskill

265 In section 14, page 16, leave out lines 12 and 13

Community payback orders – unpaid work or other activity requirement

Kenny MacAskill

- 240 In section 14, page 13, line 6, leave out from <and> to end of line 7 and insert <or—
() unpaid work and other activity.
() Whether the offender must undertake other activity as well as unpaid work is for the responsible officer to determine.>

Kenny MacAskill

241 In section 14, page 13, line 8, after <and> insert <any>

Angela Constance

398 In section 14, page 13, line 9, after <officer> insert <but must be such as the responsible officer considers provides significant benefits in the area in which the work or activity is undertaken>

Kenny MacAskill

242 In section 14, page 13, line 22, at end insert—

- <() An order under subsection (6) may only substitute for the number of hours for the time being specified in a provision mentioned in the first column of the following table a number of hours falling within the range set out in the corresponding entry in the second column.

<i>Provision</i>	<i>Range</i>	
	<i>No fewer than than</i>	<i>No more than</i>
Subsection (3)(a)	10 hours	40 hours
Subsection (3)(b)	250 hours	350 hours
Subsections (4) and (5)	70 hours hours>	150

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Kenny MacAskill

244 In section 14, page 14, line 6, leave out <total>

Kenny MacAskill

245 In section 14, page 14, leave out line 9 and insert—
<() any other activity to be undertaken.>

Kenny MacAskill

246 In section 14, page 14, line 12, leave out <total>

Kenny MacAskill

247 In section 14, page 14, line 14, leave out from <amend> to <a> in line 16 and insert—
<(a) substitute another percentage for the percentage for the time being specified in subsection (2)(a),
(b) substitute another number of hours for the number of hours for the time being specified in subsection (2)(b).
() An order is not to be made under subsection (3) unless a draft of the statutory instrument containing the order has been laid before and approved by>

Kenny MacAskill

248 In section 14, page 14, line 19, leave out <total>

Kenny MacAskill

249 In section 14, page 14, line 19, after <and> insert <any>

Kenny MacAskill

250 In section 14, page 14, line 22, at end insert <beginning with the imposition of the requirement.>

Kenny MacAskill

251 In section 14, page 14, line 23, leave out from <such> to end of line 29 and insert—
<(a) in relation to a level 1 unpaid work or other activity requirement, 3 months or such longer period as the court may specify in the requirement,
(b) in relation to a level 2 unpaid work or other activity requirement, 6 months or such longer period as the court may specify in the requirement.>

Kenny MacAskill

255 In section 14, page 15, line 5, leave out <total>

Kenny MacAskill

256 In section 14, page 15, line 7, after <and> insert <any>

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Kenny MacAskill

- 261 In section 14, page 15, line 32, leave out <such requirements in respect of> and insert <community payback orders imposing such a requirement on>

Kenny MacAskill

- 262 In section 14, page 15, line 36, leave out <so directs> and insert <makes a direction under subsection (2)>

Kenny MacAskill

- 263 In section 14, page 15, line 39, leave out <so direct> and insert <make a direction under subsection (2)>

Kenny MacAskill

- 264 In section 14, page 15, line 41, leave out from <300> to end of line 42 and insert <the number of hours specified in section 227I(3)(b) less the aggregate of the number of hours of unpaid work or activity still to be completed under each existing requirement at the time the new requirement is imposed.

- () In calculating that aggregate, if any existing requirement is concurrent with another (by virtue of a direction under subsection (2)), hours that count for the purposes of compliance with both (or, as the case may be, all) are to be counted only once.>

Kenny MacAskill

- 266 In section 14, page 16, line 14, after <and> insert <any>

Kenny MacAskill

- 285 In section 14, page 22, line 18, leave out <total>

Kenny MacAskill

- 288 In section 14, page 22, line 25, leave out <total>

Kenny MacAskill

- 289 In section 14, page 22, line 26, leave out from <maximum> to end of line 27 and insert <appropriate maximum.

- () The appropriate maximum is the number of hours specified in section 227I(3)(b) at the time the unpaid work or other activity requirement being varied was imposed less the aggregate of the number of hours of unpaid work or other activity still to be completed under each other unpaid work or other activity requirement (if any) in effect in respect of the offender at the time of the variation (a “current requirement”).

- () In calculating that aggregate, if any current requirement is concurrent with another (by virtue of a direction under section 227N(2)), hours that count for the purposes of compliance with both (or, as the case may be, all) are to be counted only once.>

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Community payback orders – fine defaulters

Kenny MacAskill

252 In section 14, page 14, line 36, leave out <sentence> and insert <period>

Kenny MacAskill

253 In section 14, page 15, line 1, leave out <sentence> and insert <period>

Kenny MacAskill

258 In section 14, page 15, leave out lines 14 to 17

Kenny MacAskill

292 In section 14, page 22, line 35, at end insert—

<() Subsection (8) applies in relation to a community payback order imposed under section 227M(2) as if the reference to the offence in relation to which the order was imposed were a reference to the failure to pay in respect of which the order was imposed.>

Community payback orders – mental health treatment requirements (chartered psychologists)

Kenny MacAskill

268 In section 14, page 17, line 20, leave out <chartered> and insert <registered>

Kenny MacAskill

269 In section 14, page 17, line 33, leave out <chartered> and insert <registered>

Kenny MacAskill

270 In section 14, page 17, line 39, leave out <chartered> and insert <registered>

Kenny MacAskill

271 In section 14, page 18, line 19, after <practitioner> insert <(within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13))>

Kenny MacAskill

272 In section 14, page 19, line 1, leave out <chartered> and insert <registered>

Kenny MacAskill

273 In section 14, page 19, line 24, leave out <chartered> and insert <registered>

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Community payback orders – drug treatment requirement

Kenny MacAskill

274 In section 14, page 20, line 17, after <been> insert <, or can be,>

Community payback orders – commencement and standards

Robert Brown

276* In section 14, page 21, line 13 at end, insert—

<Community payback orders: commencement and standards

227VB Commencement of community payback orders

- (1) Each community payback order must specify—
 - (a) if the order imposes a supervision requirement, the date by which the specified period (within the meaning of section 227G) must have begun,
 - (b) if the order imposes an unpaid work or other activity requirement, the date by which the offender must have begun to undertake the unpaid work or other activity.
- (2) At least one of the dates specified by virtue of subsection (1) must, wherever possible, be either the day on which the community payback order is imposed, or the weekday immediately following that day.
- (3) Both the dates specified by virtue of subsection (1) must be as soon after the day on which the community payback order is imposed as is practicable.

227VC Standards with which community payback orders must comply

- (1) The Scottish Ministers may, by regulations made by statutory instrument, specify standards with which community payback orders must comply.
- (2) Standards specified under subsection (1) must aim to ensure that community payback orders (and any requirements imposed by them) are—
 - (a) capable of being delivered promptly,
 - (b) effective,
 - (c) proportionate to the nature of the offence and the circumstances of the offender, and
 - (d) consistent with the purposes and principles of sentencing.
- (3) Regulations under subsection (1) are subject to annulment in pursuance of a resolution of the Scottish Parliament.>

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Community payback orders – progress reviews

Kenny MacAskill

- 278 In section 14, page 21, line 22, leave out <by the appropriate court> and insert <(if different) the appropriate court, and, where those courts are different, the court must specify in the order which of those courts is to carry out the reviews>

Kenny MacAskill

- 279 In section 14, page 21, line 33, at end insert—
- <(8A) Subsections (8B) and (8C) apply where, in the course of carrying out a progress review in respect of a community payback order, it appears to the court that the offender has failed to comply with a requirement imposed by the order.
 - (8B) The court must—
 - (a) provide the offender with written details of the alleged failure,
 - (b) inform the offender that the offender is entitled to be legally represented, and
 - (c) inform the offender that no answer need be given to the allegation before the offender—
 - (i) has been given an opportunity to take legal advice, or
 - (ii) has indicated that the offender does not wish to take legal advice.
 - (8C) The court must then—
 - (a) if it is the appropriate court, appoint another hearing for consideration of the alleged failure in accordance with section 227ZB, or
 - (b) if it is not the appropriate court, refer the alleged failure to that court for consideration in accordance with that section.>

Community payback orders – revocation, variation and discharge, including where CPO breached

Kenny MacAskill

- 281 In section 14, page 22, line 5, leave out <proposes to vary, revoke or discharge> and insert <is considering varying, revoking or discharging>

Kenny MacAskill

- 282 In section 14, page 22, line 6, leave out <under section 227W(9) or 227X(1)> and insert <imposed on an offender>

Kenny MacAskill

- 283 In section 14, page 22, line 9, at end insert—

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<() Subsection (2) does not apply where the court is considering varying the order under section 227ZB(5)(c).>

Kenny MacAskill

284 In section 14, page 22, line 13, at end insert—

<() include provision for progress reviews under section 227W,
() where the order already includes such provision, vary that provision.>

Kenny MacAskill

287 In section 14, page 22, leave out lines 22 to 24

Kenny MacAskill

293 In section 14, page 22, line 36, leave out <proposes to vary, revoke or discharge> and insert <is considering varying, revoking or discharging>

Kenny MacAskill

294 In section 14, page 22, line 39, after <227W(6)> insert <or 227ZB(2)(b)>

Kenny MacAskill

298 In section 14, page 23, line 21, leave out <under section 227W for it to be reviewed> and insert <for a progress review under section 227W>

Kenny MacAskill

303 In section 14, page 23, line 36, at end insert—

<() Subsection (6)(a) does not prevent the imposition of a restricted movement requirement under section 227ZB(5)(c).
() In determining for the purpose of subsection (6)(a) whether an unpaid work or other activity requirement is a requirement that could have been imposed by the order when the order was imposed, the effect of section 227N(6) is to be ignored.>

Kenny MacAskill

306 In section 14, page 23, line 40, at end insert—

<() Subsections (4) and (5) of section 227E apply, with the necessary modifications, where a community payback order is varied as they apply where such an order is imposed.>

Kenny MacAskill

309 In section 14, page 24, line 7, leave out from <an> to <varied> in line 8 and insert <the court is considering varying the order>

Kenny MacAskill

310 In section 14, page 24, line 10, leave out <as proposed in the application>

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Kenny MacAskill

311 In section 14, page 24, line 14, leave out <as proposed in the application>

Kenny MacAskill

314 In section 14, page 24, line 30, at end insert—

<(4A) The court must, before considering the alleged failure—

- (a) provide the offender with written details of the alleged failure,
- (b) inform the offender that the offender is entitled to be legally represented, and
- (c) inform the offender that no answer need be given to the allegation before the offender—
 - (i) has been given an opportunity to take legal advice, or
 - (ii) has indicated that the offender does not wish to take legal advice.

(4B) Subsection (4A) does not apply if the offender has previously been provided with those details and informed about those matters under section 227W(8B) of this Act.>

Kenny MacAskill

315 In section 14, page 24, line 34, at beginning insert <where the order was imposed under section 227A(1),>

Kenny MacAskill

316 In section 14, page 24, line 36, at end insert—

<(ba) where the order was imposed under section 227A(4), revoke the order and impose on the offender a sentence of imprisonment for a term not exceeding—

- (i) where the court is a justice of the peace court, 60 days,
- (ii) in any other case, 3 months,

(bb) where the order was imposed under section 227M(2), revoke the order and impose on the offender a period of imprisonment for a term not exceeding—

- (i) where the court is a justice of the peace court, 60 days,
- (ii) in any other case, 3 months,>

Kenny MacAskill

317 In section 14, page 24, line 38, after <or> insert <revoke or>

Kenny MacAskill

318 In section 14, page 24, line 38, at end insert <, or

() both impose a fine under paragraph (a) and vary the order under paragraph (c).>

THIS IS NOT THE MARSHALLED LIST

Kenny MacAskill

319 In section 14, page 24, line 38, at end insert—

<(5A) Where the court revokes a community payback order under subsection (5)(b) or (ba) and the offender is, in respect of the same offence, also subject to—

(a) a drug treatment and testing order, by virtue of section 234J, or

(b) a restriction of liberty order, by virtue of section 245D(3),

the court must, before dealing with the offender under subsection (5)(b) or (ba), revoke the drug treatment and testing order or, as the case may be, restriction of liberty order.>

Kenny MacAskill

320 In section 14, page 24, line 38, at end insert—

<() If the court is satisfied that the offender has failed to comply with a requirement imposed by the order but had a reasonable excuse for the failure, the court may, subject to section 227Y(2), vary the order so as to impose a new requirement, vary any requirement imposed by the order or revoke or discharge any requirement imposed by the order.>

Kenny MacAskill

321 In section 14, page 25, line 1, leave out <imposes> and insert <varies the order so as to impose>

Kenny MacAskill

322 In section 14, page 25, line 3, at end insert—

<(7A) The court must ensure that the specified period under section 227G in relation to the supervision requirement is at least as long as the period for which the restricted movement requirement has effect and, where the community payback order already imposes a supervision requirement, must vary it accordingly, if necessary.

(7B) The minimum period of 6 months in section 227G(3) does not apply in relation to a supervision requirement imposed under subsection (7).>

Kenny MacAskill

323 In section 14, page 25, leave out lines 8 to 11

Kenny MacAskill

324 In section 14, page 25, leave out lines 19 to 24

Kenny MacAskill

325 In section 14, page 25, line 24, at end insert—

<() Subsections (5)(b) and (ba) and (5A) are subject to section 42(9) of the Criminal Justice (Scotland) Act 2003 (asp 7) (powers of drugs courts to deal with breach of community payback orders).>

THIS IS NOT THE MARSHALLED LIST

Kenny MacAskill

326 In section 14, page 25, leave out lines 26 to 32

Community payback orders – restricted movement requirement

Kenny MacAskill

328 In section 14, page 26, line 14, leave out from <A> to <offender> and insert <In imposing a restricted movement requirement containing provision under subsection (2)(a), the court must ensure that the offender is not required, either by the requirement alone or the requirement taken together with any other relevant requirement or order.>

Kenny MacAskill

329 In section 14, page 26, line 15, at end insert—

- <() In subsection (3), “other relevant requirement or order” means—
- (a) any other restricted movement requirement in effect in respect of the offender at the time the court is imposing the requirement referred to in subsection (3), and
 - (b) any restriction of liberty order under section 245A in effect in respect of the offender at that time.>

Kenny MacAskill

330 In section 14, page 26, line 18, leave out <of not more than 12 months>

Kenny MacAskill

331 In section 14, page 26, line 18, at end insert—

- <(4A) The period specified under subsection (4)(b) must be—
- (a) not less than 14 days, and
 - (b) subject to subsections (4B) and (4C), not more than 12 months.
- (4B) Subsection (4C) applies in the case of a restricted movement requirement imposed for failure to comply with a requirement of a community payback order—
- (a) where the offender was under 18 years of age at the time the order was imposed, or
 - (b) where the only requirement imposed by the order is a level 1 unpaid work or other activity requirement.
- (4C) The period specified under subsection (4)(b) must be not more than—
- (a) where the order was imposed by a justice of the peace court, 60 days, or
 - (b) in any other case, 3 months.>

Kenny MacAskill

332 In section 14, page 26, line 28, leave out <(4)(b)> and insert <(4A)(b)>

THIS IS NOT THE MARSHALLED LIST

Kenny MacAskill

- 333 In section 14, page 27, line 11, leave from <an> to <varied> in line 12 and insert <the court is considering varying the requirement>

Kenny MacAskill

- 334 In section 14, page 27, line 14, leave out <proposed in the application>

Kenny MacAskill

- 335 In section 14, page 27, line 20, leave out <proposed in the application>

Unpaid work and other activity requirement – consultation

Robert Brown

- 98 In section 14, page 29, line 3, after <consult> insert—
- <(a) persons or organisations representing victims of crime,
 - (b) community councils established in their area, and
 - (c)>

Annual reports on community payback orders

Robert Brown

- 99 In section 14, page 29, line 11, at end insert—
- <Annual reports on community payback orders*

227ZJA Annual reports on community payback orders

- (1) Each local authority must, as soon as practicable after the end of each reporting year, publish a report on the operation of community payback orders within their area during that reporting year.
- (2) A report under subsection (1) must specify—
 - (a) in relation to unpaid work or other activity under section 227I—
 - (i) the number of offenders undertaking the unpaid work or other activity,
 - (ii) the total number of hours of unpaid work or other activity undertaken,
 - (iii) the nature of the unpaid work or other activity undertaken,
 - (iv) the cost of organising and managing the unpaid work or other activity, and the estimated value of that work and activity,
 - (b) in relation to programmes under section 227P—
 - (i) the number of offenders participating in the programmes,

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- (ii) the number and nature of those programmes,
 - (iii) the cost of providing those programmes.
- (3) The Scottish Ministers must, as soon as practicable after the end of each reporting year, lay before the Scottish Parliament and publish a report on the operation of community payback orders during that reporting year.
- (4) A report under subsection (3) must—
- (a) collate and summarise the data included in the various reports under subsection (1),
 - (b) provide an assessment of the overall costs and effectiveness of community payback orders.
- (5) In this section, “reporting year” means—
- (a) the period of 12 months beginning on the day this section comes into force, or
 - (b) any subsequent period of 12 months beginning on an anniversary of that day.>

Community payback orders – consequential modifications

Kenny MacAskill

342 In section 14, page 29, line 25, at end insert—

<(2) Schedule (*Community payback orders: consequential modifications*) modifies enactments in consequence of this section.>

Kenny MacAskill

343 After schedule 1, insert—

<SCHEDULE
(*introduced by section 14(2)*)

COMMUNITY PAYBACK ORDERS: CONSEQUENTIAL MODIFICATIONS

PART 1

THE 1995 ACT

The 1995 Act

- 1 The 1995 Act is amended as follows.
- 2 In section 52H(3) (early termination of assessment order), the following are repealed—
 - (a) the word “or” immediately following paragraph (e), and
 - (b) paragraph (f).
- 3 In section 52R(3) (termination of treatment order), the following are repealed—
 - (a) the word “or” immediately following paragraph (e), and
 - (b) paragraph (f).

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- 4 In section 53(12)(a) (interim compulsion orders), for sub-paragraphs (vi) and (vii) substitute—
- “(vi) impose a community payback order;
 - (vii) make a drug treatment and testing order; or
 - (viii) make a restriction of liberty order,”.
- 5 In section 57A(15)(a) (compulsion order), for sub-paragraphs (vi) and (vii) substitute—
- “(vi) impose a community payback order;
 - (vii) make a drug treatment and testing order; or
 - (viii) make a restriction of liberty order,”.
- 6 In section 58(8) (order for hospital admission or guardianship), for “make a probation order or a community service order” substitute “impose a community payback order or make a drug treatment and testing order”.
- 7 In section 106(1) (right of appeal), for paragraph (d) substitute—
- “(d) against any drug treatment and testing order;”.
- 8 In section 108 (Lord Advocate’s right of appeal against disposal)—
- (a) in subsection (1), paragraphs (d) and (e) are repealed, and
 - (b) in subsection (2)(b)(iii), for “(d) to (e)” substitute “(dd)”.
- 9 In section 121A(4) (suspension of certain sentences pending determination of appeal), for paragraphs (a) to (c) substitute—
- “(aa) a community payback order;”.
- 10 In section 175 (right of appeal)—
- (a) in subsection (2)(c), for “probation order, drug treatment and testing order or any community service order” substitute “drug treatment and testing order”,
 - (b) in subsection (4), paragraphs (d) and (e) are repealed, and
 - (c) in subsection (4A)(b)(iii), for “(d) to (e)” substitute “(dd)”.
- 11 In section 193A(4) (suspension of certain sentences pending determination of appeal)—
- (a) for paragraphs (a) to (c) substitute—
 - “(aa) a community payback order;”, and
 - (b) paragraph (e) is repealed.
- 12 Sections 228 to 234 (probation) are repealed.
- 13 In section 234H (disposal on revocation of drug treatment and testing order)—
- (a) in subsection (1), for “drugs” substitute “drug”, and

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- (b) in subsection (3), for the words from “subject to” where they first occur to the end substitute “, in respect of the same offence, also subject to a community payback order, by virtue of section 234J, or a restriction of liberty order, by virtue of section 245D, the court shall, before disposing of the offender under subsection (1) above, revoke the community payback order or restriction of liberty order (as the case may be).”.
- 14 (1) Section 234J (concurrent drug treatment and testing and probation orders) is amended as follows.
 - (2) In subsection (1)—
 - (a) for “sections 228(1) and” substitute “section”, and
 - (b) for “probation order” substitute “community payback order”.
 - (3) In subsection (3)—
 - (a) for “probation order” substitute “community payback order”, and
 - (b) for paragraphs (b) and (c) substitute—
 - “(ba) the local authority within whose area the offender will reside for the duration of each order.”.
 - (4) In subsection (4)—
 - (a) in paragraph (a), for “probation order and is dealt with under section 232(2)(c)” substitute “community payback order and is dealt with under section 227ZB(5)(c)”, and
 - (b) in paragraph (b), for “232(2)(c) of this Act in relation to the probation order” substitute “227ZB(5)(c) of this Act in relation to the community payback order”.
 - (5) In subsection (5)—
 - (a) for “probation order” substitute “community payback order”, and
 - (b) for “232(2)” substitute “227ZB(5)”.
- 15 Sections 235 to 245 (supervised attendance orders and community service orders) are repealed.
- 16 (1) Section 245A (restriction of liberty orders) is amended as follows.
 - (2) In subsection (2), the words from “but” to the end are repealed.
 - (3) After subsection (2) insert—
 - “(2A) In making a restriction of liberty order containing provision under subsection (2)(a), the court must ensure that the offender is not required, either by the order alone or the order taken together with any other relevant order or requirement, to be in any place or places for a period or periods totalling more than 12 hours in any one day.
 - (2B) In subsection (2A), “other relevant order or requirement” means—
 - (a) any other restriction of liberty order in effect in respect of the offender at the time the court is making the order referred to in subsection (2A), and
 - (b) any restricted movement requirement under section 227ZD in effect in respect of the offender at that time.”.

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- (4) In subsection (12)(a), for “subsection (2)” substitute “subsection (2A)”.
- 17 (1) Section 245D (combination of restriction of liberty orders with other orders) is amended as follows.
 - (2) In subsection (1)(b)—
 - (a) in sub-paragraph (i), for “probation order made under section 228(1)” substitute “community payback order imposed under section 227A(1)”, and
 - (b) in sub-paragraph (ii)—
 - (i) for “probation order made under section 228(1) of this Act,” substitute “community payback order imposed under section 227A(1) of this Act or”, and
 - (ii) the words “or both such orders” are repealed.
 - (3) In subsection (2), for “probation order” substitute “community payback order”.
 - (4) In subsection (3)—
 - (a) the word “228(1),” is repealed,
 - (b) in paragraph (a), for “probation order” substitute “community payback order”, and
 - (c) in paragraph (b), for “either or both of a probation order and” substitute “either a community payback order or”.
 - (5) In subsection (4)—
 - (a) for “probation order” substitute “community payback order”, and
 - (b) for paragraph (b) substitute—
 - “(b) the local authority within whose area the offender will reside for the duration of each order.”.
 - (6) Subsection (6) is repealed.
 - (7) In subsection (7)—
 - (a) in paragraph (a)—
 - (i) for “contained in a probation order and is dealt with under section 232(2)(c)” substitute “imposed by a community payback order and is dealt with under section 227ZB(5)(c)”, and
 - (ii) the words from “234G(2)(b)” to “section” where it third occurs are repealed,
 - (b) in paragraph (b), the words from “232(2)(c)” to “section” where it third occurs are repealed, and
 - (c) in paragraph (c), for “232(2)(c) of this Act in relation to a probation order” substitute “227ZB(5)(c) of this Act in relation to a community payback order”.
 - (8) In subsection (8), for “232(2)” substitute “227ZB”.
 - (9) In subsection (9)—
 - (a) in paragraph (a), for “probation order” substitute “community payback order”, and

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- (b) paragraph (c) is repealed.
- 18 (1) Section 245G (disposal on revocation of restriction of liberty order) is amended as follows.
- (2) In subsection (2), for the words from “by virtue” to the end substitute “in respect of the same offence, also subject to a community payback order or a drug treatment and testing order, by virtue of section 245D(3), it shall before disposing of the offender under subsection (1) above, revoke the community payback order or drug treatment and testing order.”.
 - (3) In subsection (3), for “probation order discharged” substitute “community payback order”.
 - (4) Subsection (4) is repealed.
- 19 In section 245J (breach of certain orders: adjourning hearing and remanding in custody etc.)—
- (a) in subsection (1)—
 - (i) for “a probationer or” substitute “an”,
 - (ii) for “probation order” substitute “community payback order”, and
 - (iii) the words “supervised attendance order, community service order” are repealed,
 - (b) in subsection (2), the words “probationer or” are repealed, and
 - (c) in subsection (4), for “A probationer or” substitute “An”.
- 20 Sections 245K to 245Q (community reparation orders) are repealed.
- 21 In section 246 (admonition and absolute discharge), in each of subsections (2) and (3), the words “and that a probation order is not appropriate” are repealed.
- 22 In section 249(2) (compensation order against convicted person), for paragraph (b) substitute—
- “(ab) where, under section 227A of this Act, it imposes a community payback order;”.
- 23 In section 307 (interpretation)—
- (a) in subsection (1)—
 - (i) insert at the appropriate places—
 - ““alcohol treatment requirement” has the meaning given in section 227V(1);”
 - ““community payback order” means a community payback order (within the meaning of section 227A(2)) imposed under section 227A(1) or (4) or 227M(2);”
 - ““compensation requirement” has the meaning given in section 227H(1);”
 - ““conduct requirement” has the meaning given in section 227VA(1);”
 - ““drug treatment requirement” has the meaning given in section 227U(1);”

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““mental health treatment requirement” has the meaning given in section 227R(1);”

““programme requirement” has the meaning given in section 227P(1);”

““residence requirement” has the meaning given in section 227Q(1);”

““responsible officer”, in relation to a community payback order, is to be construed in accordance with section 227C;”

““restricted movement requirement” has the meaning given in section 227ZD(1);”

““supervision requirement” has the meaning given in section 227G(1);”

““unpaid work or other activity requirement” has the meaning given in section 227I(1), and “level 1 unpaid work or other activity requirement” and “level 2 unpaid work or other activity requirement” are to be construed in accordance with section 227I(4) and (5) respectively;”, and

(ii) the definitions of the following terms are repealed—

“appropriate court”

“community service order”

“probationer”

“probation order”

“probation period”, and

(b) subsection (3) is repealed.

24 Schedules 6 and 7 are repealed.

PART 2

OTHER ENACTMENTS

The Social Work (Scotland) Act 1968 (c.49)

25 (1) The Social Work (Scotland) Act 1968 is amended as follows.

(2) In section 27 (supervision and care of persons put on probation or released from prisons etc.), in subsection (1)(b)—

(a) in paragraph (iii), for the words from “community service order” to the end substitute “community payback order imposed under section 277A or 227M of the Criminal Procedure (Scotland) Act 1995 imposing an unpaid work or other activity requirement”, and

(b) sub-paragraphs (iv) and (va) are repealed.

(3) In section 86(3) (adjustments between authority providing accommodation etc. and authority of area of residence), after “supervision order” insert “, community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995,”.

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The Rehabilitation of Offenders Act 1974 (c.53)

- 26 (1) The Rehabilitation of Offenders Act 1974 is amended as follows.
- (2) In section 5(4A) (rehabilitation periods for particular sentences), the words “a probation order or” are repealed.
 - (3) In section 6(3) (the rehabilitation period applicable to a conviction), the following are repealed—
 - (a) the words “or a probation order was made”,
 - (b) the words “or a breach of the order”, and
 - (c) the words “or probation order”.

The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55)

- 27 In Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, in Part 2 (ineligibility for and disqualification and excusal from jury service), in paragraph (bb)—
- (a) for sub-paragraph (i) substitute—
 - “(i) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46);”, and
 - (b) sub-paragraph (iii) is repealed.

The Local Government and Planning (Scotland) Act 1982 (c.43)

- 28 In section 24 of the Local Government and Planning (Scotland) Act 1982 (councils’ functions in relation to the provision of gardening assistance for the disabled and the elderly), in subsection (3), for the words from “instruction” to “that Act” substitute “determination that may be made or instruction that may be given, for the purposes of an unpaid work or other activity requirement imposed in a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46), by the responsible officer in relation to the order,”.

The Foster Children (Scotland) Act 1984 (c.56)

- 29 In section 2 of the Foster Children (Scotland) Act 1984 (exceptions to section 1), in subsection (3), for “probation order” substitute “community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46)”.

The Road Traffic Offenders Act 1988 (c.53)

- 30 In section 46(3)(b) of the Road Traffic Offenders Act 1988 (combination of disqualification and endorsement with probation orders and orders for discharge), the words “section 228 (probation) or” are repealed.

The Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40)

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- 31 In Schedule 3 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (transitional provisions, transitory modifications and savings), in Part 2, paragraph 13 is repealed.

The Proceeds of Crime (Scotland) Act 1995 (c.43)

- 32 (1) The Proceeds of Crime (Scotland) Act 1995 is amended as follows.
- (2) In section 25(9) (recall or variation of suspended forfeiture order), the words “probation order or” are repealed.
- (3) In section 26(9) (property wrongly forfeited: return or compensation), the words “probation order or” are repealed.

The Crime and Punishment (Scotland) Act 1997 (c.48)

- 33 In the Crime and Punishment (Scotland) Act 1997, the following provisions are repealed—
- (a) section 26 (evidence concerning certain orders), and
- (b) in Schedule 1 (minor and consequential amendments), in paragraph 21, sub-paragraphs (27) to (29).

The Crime and Disorder Act 1998 (c.37)

- 34 In the Crime and Disorder Act 1998, in Schedule 6 (drug treatment and testing orders: amendment of the 1995 Act), in Part 1, paragraphs 1 and 2 are repealed.

The Powers of Criminal Courts (Sentencing) Act 2000 (c.6)

- 35 In Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (consequential amendments), paragraphs 176 to 178 are repealed.

The Criminal Justice and Court Services Act 2000 (c.43)

- 36 (1) Schedule 7 to the Criminal Justice and Court Services Act 2000 (minor and consequential amendments) is amended as follows.
- (2) In paragraph 4(2), in the entry relating to the Criminal Procedure (Scotland) Act 1995, for “sections 209(3)(a) and 234(1)(a)” substitute “section 209(3)(a)”.
- (3) Paragraphs 122 to 125 are repealed.

The Social Security Fraud Act 2001 (c.11)

- 37 In section 7(9)(b) of the Social Security Fraud Act 2001 (loss of benefit for commission of benefit offences), the words “or a court in Scotland makes a probation order” are repealed.

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The Justice (Northern Ireland) Act 2002 (c.26)

- 38 In Schedule 4 to the Justice (Northern Ireland) Act 2002 (functions of justices of the peace), paragraph 37 is repealed.

The Criminal Justice (Scotland) Act 2003 (asp 7)

- 39 (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.
- (2) In section 42 (drugs courts)—
- (a) in subsection (4)—
- (i) for “probationer with the requirements of a probation order” substitute “community payback order”,
- (ii) in paragraph (b), for the words from “make” to “work” substitute “in the case of a failure to comply with the requirements of a drug treatment and testing order, make a community payback order imposing a level 1 unpaid work or other activity requirement, so however that the total hours of unpaid work or other activity”, and
- (iii) for “probation order” where those words second occur substitute “community payback order”,
- (b) in subsection (6), for paragraph (b) substitute—
- “(b) alleged at—
- (i) a progress review carried out by such a court in relation to a community payback order; or
- (ii) a diet of such a court to which an offender has been cited under section 227ZB(2) of that Act (breach of community payback order),
- that the offender has failed to comply with a requirement imposed by a community payback order.”,
- (c) in subsection (7)—
- (i) the words “or probationer” are repealed, and
- (ii) for “232” substitute “227ZB”,
- (d) for subsection (9) substitute—
- “(9) If a community payback order is revoked under section 227ZB(5)(b) of the 1995 Act, the court (whether or not a drugs court) must, in dealing with the offender by virtue of that section, take into account any sentence which has been imposed under paragraph (a) of subsection (4) of this section in relation to a failure to comply with the community payback order.”,
- (e) in subsection (10)—
- (i) insert at the appropriate places—
- ““community payback order” means an order imposed under section 227A of the 1995 Act;”
- ““level 1 unpaid work or other activity requirement” has the meaning given in section 227I(4) of the 1995 Act;”, and

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- (ii) the definition of “probation order” is repealed, and
 - (f) in subsection (11), paragraphs (a) and (b) are repealed.
- (3) Section 46 (requirement for remote monitoring in probation order) is repealed.
- (4) In section 50 (amendments in relation to certain non-custodial sentences), subsections (1), (2) and (4) are repealed.
- (5) In section 60 (unified citation provisions)—
 - (a) in subsection (1), paragraphs (a), (b), (e) and (f) are repealed, and
 - (b) subsections (3) and (4) are repealed.

The Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)

- 40 In the Mental Health (Care and Treatment) (Scotland) Act 2003, the following provisions are repealed—
- (a) section 135 (amendment of 1995 Act: probation for treatment of mental disorder), and
 - (b) in schedule 4 (minor and consequential amendments), in paragraph 8, sub-paragraph (15).

The Criminal Justice Act 2003 (c.44)

- 41 In Schedule 32 to the Criminal Justice Act 2003 (amendments relating to sentencing), paragraphs 69 to 72 are repealed.

The Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)

- 42 In the Antisocial Behaviour etc. (Scotland) Act 2004, the following provisions are repealed—
- (a) section 120 (community reparation orders), and
 - (b) in schedule 4 (minor and consequential amendments), in paragraph 5, sub-paragraphs (3), (5), (6) and (11).

The Management of Offenders etc. (Scotland) Act 2005 (asp 14)

- 43 (1) The Management of Offenders etc. (Scotland) Act 2005 is amended as follows.
- (2) In section 10 (arrangements for assessing and managing risks posed by certain offenders), in subsection (1)(b), for sub-paragraph (i) substitute—
- “(i) is subject to a community payback order imposed under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46), or”.
- (3) Section 12 (probation progress review) is repealed.

The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6)

- 44 In the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, the following provisions are repealed—

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- (a) in section 49 (compensation orders), subsection (4),
- (b) section 57 (probation and community service orders), and
- (c) in paragraph 26 of the schedule (modification of enactments), subparagraphs (l) and (n).

The Criminal Justice and Immigration Act 2008 (c.4)

45 In Part 1 of Schedule 4 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation orders: consequential amendments), paragraphs 43 to 46 are repealed.>

Offence of stalking, offence of threatening, alarming or distressing behaviour

Rhoda Grant

- 399 In section 15, page 29, line 29, after <subsection (1)> insert—
- <() at the beginning insert “Subject to subsection (1A),” and
()>

Rhoda Grant

- 400 In section 15, page 29, line 29, at end insert—
- <() after subsection (1) insert—
- “(1A) The prosecutor must, where a person (“A”) is convicted of the offence of stalking a person (“B”), apply to the court to make a non-harassment order against A requiring A to refrain from such conduct in relation to—
- (a) B, or
 - (b) any other person in relation to whom the course of conduct engaged in by A, and which constituted the offence, related,
- as may be specified in the order for such period (which includes an indeterminate period) as may be so specified, in addition to any other disposal which may be made in relation to the offence.”>

Rhoda Grant

- 401 In section 15, page 29, line 30, after <subsection (2)> insert—
- <() after “subsection (1)” insert “or (1A),” and
()>

Rhoda Grant

- 402 After section 31, insert—

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<Stalking

Offence of stalking

- (1) A person (“A”) commits an offence, to be known as the offence of stalking, where A stalks another person (“B”).
- (2) For the purposes of subsection (1), A stalks B where—
 - (a) A engages in a course of conduct,
 - (b) subsection (3) or (4) applies, and
 - (c) A’s course of conduct causes B to suffer—
 - (i) physical or psychological harm, or
 - (ii) apprehension or fear for B’s own safety or for the safety of any other person.
- (3) This subsection applies where A engages in the course of conduct with the intention of causing such harm to B or of arousing such apprehension or fear in B.
- (4) This subsection applies where A knows, or ought in all the circumstances to have known, that engaging in the course of conduct would be likely to cause such harm or arouse such apprehension or fear.
- (5) It is a defence for a person charged with an offence under this section to show that the course of action—
 - (a) was authorised by virtue of any enactment or rule of law,
 - (b) was engaged in for the purpose of preventing or detecting crime, or
 - (c) was, in the particular circumstances, reasonable.
- (6) In this section—

“conduct” includes (but is not limited to)—

 - (a) following B or any other person,
 - (b) contacting B or any other person by post, telephone, email, text message or any other method,
 - (c) publishing any statement or other material—
 - (i) relating or purporting to relate to B or to any other person,
 - (ii) purporting to originate from B or from any other person,
 - (d) tracing the use by B or by any other person of the internet, email or any other form of electronic communication,
 - (e) entering or loitering in the vicinity of—
 - (i) the place of residence of B or of any other person,
 - (ii) the place of work or business of B or of any other person,
 - (iii) any place frequented by B or of any other person,
 - (f) interfering with any property in the possession of B or of any other person,

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- (g) giving offensive material to B or to any other person or leaving such material where it may be found by, given to or brought to the attention of B or any other person,
- (h) keeping B or any other person under surveillance,
- (i) acting in any other way that a reasonable person would expect would arouse apprehension or fear in B for B's own safety or for the safety of any other person, and

“course of conduct” involves conduct on at least two occasions.

- (7) A person convicted of the offence of stalking is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both,
 - (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both.>

Kenny MacAskill

378 After section 37, insert—

<Threatening, alarming or distressing behaviour

Threatening, alarming or distressing behaviour

- (1) A person (“A”) commits an offence if—
 - (a) A behaves in such a manner that a reasonable person would be likely to—
 - (i) fear for the safety of any person on account of the behaviour, or
 - (ii) be alarmed or distressed by the behaviour, and
 - (b) the condition in subsection (2) is satisfied.
- (2) That condition is that A—
 - (a) intends by the behaviour to cause fear, alarm or distress, or
 - (b) is reckless as to whether the behaviour would cause fear, alarm or distress.
- (3) It does not matter—
 - (a) whether A's behaviour is directed at anyone in particular,
 - (b) if it is directed at a particular person, whether that person is aware of the behaviour, or
 - (c) whether A's behaviour—
 - (i) actually causes anyone fear, alarm or distress, or
 - (ii) takes place in public or private.
- (4) Subsection (1) applies to—
 - (a) behaviour of any kind including, in particular, things said or otherwise communicated as well as things done,
 - (b) behaviour consisting of—
 - (i) a single act, or
 - (ii) a course of conduct.

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- (5) The reference in subsection (1)(a)(i) to fear for a person’s safety is to fear that the person’s life could be endangered or that the person’s physical or psychological well-being could be harmed.
- (6) A person guilty of an offence under subsection (1) is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.>

Non-harassment orders – course of conduct

Rhoda Grant

- 5 In section 15, page 29, line 30, leave out <“harassment (or further harassment)”> and insert <“misconduct (or further misconduct)”>

Rhoda Grant

- 6 In section 15, page 30, line 18, leave out <“harassment” and “conduct” are> and insert <“conduct” is>

Rhoda Grant

- 7 In section 15, page 30, line 20, at end insert <whether on one or more than one occasion>

Presumption against short periods of imprisonment or detention

Robert Brown

- 100 In section 17, page 30, line 32, leave out <6> and insert <3>

Robert Brown

- 101 In section 17, page 31, line 2, leave out <6> and insert <3>

Robert Brown

- 388 In section 17, page 31, line 7, at end insert—
 - <(4) The Scottish Ministers may not bring subsection (1), (2) or (3) into force until they have—
 - (a) prepared a report setting out—
 - (i) the reduction in the number of sentences of imprisonment or detention imposed annually that is expected as a result of bringing those subsections into force,
 - (ii) the increase in the number of community payback orders imposed annually that is expected as a result of bringing those subsections into force (by comparison with the number of such orders imposed annually that would be expected if those subsections were not brought into force),

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- (iii) the estimated annual cost implications of the changes referred to in sub-paragraphs (i) and (ii),
 - (iv) the additional funding, if any, that Ministers will provide to community justice authorities or local authorities to ensure that they have the capacity to support the requirements expected to be imposed by any additional community payback orders identified under sub-paragraph (ii).
- (b) laid that report before the Scottish Parliament; and
 - (c) taken into account any views expressed on it by any committee of the Parliament the remit of which includes the criminal justice system.>

Richard Baker

Supported by: Bill Aitken

- 1** Leave out section 17

Robert Brown

- 391** In section 143, page 138, line 30, after <148(1)> insert <other than one bringing into force section 17(1), (2) or (3)>

Robert Brown

- 392** In section 143, page 138, line 35, at end insert <or
() an order under section 148(1) bringing into force section 17(1), (2) or (3),>

Robert Brown

- 393** In section 148, page 139, line 19, after <sections> insert <17(4) and>

Report on operation of sections 14 and 17

Robert Brown

- 102** After section 17, insert—
- <Report on operation of sections 14 and 17**
- (1) The Scottish Ministers must, no later than 5 years after sections 14 and 17 come fully into force, lay before the Scottish Parliament and publish a report on the operation of those sections.
 - (2) The report under subsection (1) must, in particular, include an assessment of whether and to what extent those sections, individually or collectively, have—
 - (a) reduced offending,
 - (b) increased public safety.>

THIS IS NOT THE MARSHALLED LIST

Pre-sentencing reports about organisations

Bill Wilson

103 After section 20, insert—

<Pre-sentencing reports about organisations

After section 203 of the 1995 Act (reports), insert—

“203A Reports about organisations

- (1) This section applies where an organisation is convicted of an offence.
- (2) Before dealing with the organisation in respect of the offence, the court may obtain a report into the organisation’s financial affairs and structural arrangements.
- (3) The report is to be prepared by a person appointed by the court.
- (4) The person appointed to prepare the report is referred to in this section as the “reporter”.
- (5) The court may issue directions to the reporter about—
 - (a) the information to be contained in the report,
 - (b) the particular matters to be covered by the report,
 - (c) the time by which the report is to be submitted to the court.
- (6) The court may order the organisation to give the reporter and any person acting on the reporter’s behalf—
 - (a) access at all reasonable times to the organisation’s books, documents and other records,
 - (b) such information or explanation as the reporter thinks necessary.
- (7) The reporter’s costs in preparing the report are to be paid by the clerk of court, but the court may order the organisation to reimburse to the clerk all or a part of those costs.
- (8) An order under subsection (7) may be enforced by civil diligence as if it were a fine.
- (9) On submission of the report to the court, the clerk of court must provide a copy of the report to—
 - (a) the organisation,
 - (b) the organisation’s solicitor (if any), and
 - (c) the prosecutor.
- (10) The court must have regard to the report in deciding how to deal with the organisation in respect of the offence.
- (11) If the court decides to impose a fine, the court must, in determining the amount of the fine, have regard to—
 - (a) the report, and
 - (b) if the court makes an order under subsection (7), the amount of costs that the organisation is required to reimburse under the order.

THIS IS NOT THE MARSHALLED LIST

- (12) Where the court—
- (a) makes an order under subsection (7), and
 - (b) imposes a fine on the organisation,
- any payment by the organisation is first to be applied in satisfaction of the order under subsection (7).
- (13) Where the court also makes a compensation order in respect of the offence, any payment by the organisation is first to be applied in satisfaction of the compensation order before being applied in accordance with subsection (12).”.>

Voluntary intoxication by alcohol – effect in sentencing

Robert Brown

Supported by: Bill Aitken

- 104** Leave out section 24

Mutual recognition of judgments and probation decisions

Kenny MacAskill

- 105** After section 24, insert—

<Mutual recognition of judgments and probation decisions

- (1) The Scottish Ministers may by order make provision for the purposes of and in connection with implementing any obligations of the United Kingdom created by or arising under the Framework Decision (so far as they have effect in or as regards Scotland).
- (2) The provision may, in particular, confer functions—
 - (a) on the Scottish Ministers,
 - (b) on other persons.
- (3) An order under subsection (1) may modify any enactment.
- (4) In this section, the “Framework Decision” means Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.>

Kenny MacAskill

- 184** In section 143, page 138, line 32, at end insert—

<() an order under section (*Mutual recognition of judgments and probation decisions*)(1),>

THIS IS NOT THE MARSHALLED LIST

Minimum sentence for having in a public place an article with a blade or point

Richard Baker

10 After section 24, insert—

<**Minimum sentence for having in a public place an article with a blade or point**

- (1) In section 49 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) (offence of having in a public place an article with a blade or point), after subsection (5) insert—

“(5A) Subsection (5B) applies where—

- (a) a person is convicted of an offence under subsection (1),
- (b) the offence was committed after the commencement of this subsection, and
- (c) when the offence was committed, the person was aged 16 or over.

(5B) Where this subsection applies, the court must impose a sentence of imprisonment of at least 6 months (with or without a fine) unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify not doing so.”.

- (2) In section 207(3A) of the 1995 Act (detention of young offenders: minimum sentences), after paragraph (a) insert—

“(aa) section 49(5B) of the Criminal Law (Consolidation) (Scotland) Act 1995 (minimum sentence for having in a public place an article with a blade or point);”.>

Bill Aitken

10A As an amendment to amendment 10, line 11, leave out from <6> to end of line 13 and insert <2 years (with or without a fine) unless the court is satisfied, having regard to all the circumstances, that there are grounds for mitigating the normal consequences of the conviction and thinks fit to order the offender to be imprisoned for a shorter period or not to order the offender to be imprisoned>

Involvement in serious organised crime

Kenny MacAskill

344 In section 25, page 38, line 34, at end insert—

<() Without limiting the generality of subsection (1), a person agrees to become involved in serious organised crime if the person—

- (a) agrees to do something (whether or not the doing of that thing would itself constitute an offence), and
- (b) knows or suspects, or ought reasonably to have known or suspected, that the doing of that thing will enable or further the commission of serious organised crime.>

THIS IS NOT THE MARSHALLED LIST

Robert Brown

- 345 In section 25, page 38, line 36, leave out <involving> and insert—
- (a) that would reasonably be regarded as being both serious and organised, and
 - (b) that involves>

Kenny MacAskill

- 346 In section 25, page 39, line 2, leave out <securing> and insert <obtaining>

Kenny MacAskill

- 347 In section 25, page 39, line 4, leave out <serious>

Robert Brown

- 348 In section 25, page 39, line 4, leave out <serious violence> and insert <violence or intimidation>

Kenny MacAskill

- 349 In section 25, page 39, line 4, after <committed> insert <or a threat made>

Kenny MacAskill

- 350 In section 25, page 39, line 4, leave out <securing> and insert <obtaining>

Kenny MacAskill

- 351 In section 25, page 39, line 5, at end insert <, and
“material benefit” means a right or interest of any description in any property, whether heritable or moveable and whether corporeal or incorporeal.>

Kenny MacAskill

- 358 In section 28, page 40, line 39, leave out <derived> and insert <obtained>

Offences aggravated by connection with serious organised crime (corroboration)

Robert Brown

- 352 In section 26, page 39, line 21, leave out subsection (4)

Directing serious organised crime

Robert Brown

- 353 In section 27, page 39, line 35, leave out <a serious offence> and insert <an offence under section 25(1)>

THIS IS NOT THE MARSHALLED LIST

Kenny MacAskill

- 354 In section 27, page 40, line 9, leave out subsection (4)

Robert Brown

- 355 In section 27, page 40, line 14, leave out <a serious offence> and insert <an offence under section 25(1)>

Kenny MacAskill

- 356 In section 27, page 40, line 17, leave out subsection (6)

Failure to report serious organised crime

Robert Brown

- 357 In section 28, page 40, line 28, after <suspects> insert <with good reason>

Bill Aitken

Supported by: Robert Brown

- 106 In section 28, page 40, line 36, at end insert—

<() In the case of knowledge or suspicion originating from information obtained by the person in the course of the person’s trade, profession, business or employment, this section applies only where the person’s experience or seniority in that trade, profession, business or employment makes it reasonable to assume that the person should be aware of any offence of the sort mentioned in subsection (1) that the other person has or may have committed.>

Robert Brown

- 359 In section 28, page 41, line 1, after <constable> insert <or other specified public official>

Robert Brown

- 360 In section 28, page 41, line 20, at end insert—

<() In subsection (3), “specified public official” means a person holding a public office specified in an order made by the Scottish Ministers.>

Genocide, crimes against humanity and war crimes

Kenny MacAskill

- 107 After section 28, insert—

<Genocide, crimes against humanity and war crimes

Genocide, crimes against humanity and war crimes: UK residents

- (1) The International Criminal Court (Scotland) Act 2001 (asp 13) is amended as follows.
- (2) After section 8, insert—

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“8A Meaning of “United Kingdom national” and “United Kingdom resident”

- (1) In this Part—
 - “United Kingdom national” means—
 - (a) a British citizen, a British Overseas Territories citizen, a British National (Overseas) or a British Overseas citizen,
 - (b) a person who under the British Nationality Act 1981 (c.61) is a British subject, or
 - (c) a British protected person within the meaning of that Act,
 - “United Kingdom resident” means a person who is resident in the United Kingdom.
- (2) To the extent that it would not otherwise be the case, the following individuals are to be treated for the purposes of this Part as being resident in the United Kingdom—
 - (a) an individual who has indefinite leave to remain in the United Kingdom,
 - (b) any other individual who has made an application for such leave (whether or not it has been determined) and who is in the United Kingdom,
 - (c) an individual who has leave to enter or remain in the United Kingdom for the purposes of work or study and who is in the United Kingdom,
 - (d) an individual who has made an asylum claim, or a human rights claim, which has been granted,
 - (e) any other individual who has made an asylum claim or a human rights claim (whether or not the claim has been determined) and who is in the United Kingdom,
 - (f) an individual named in an application for indefinite leave to remain, an asylum claim or a human rights claim as a dependant of the individual making the application or claim if—
 - (i) the application or claim has been granted, or
 - (ii) the named individual is in the United Kingdom (whether or not the application or claim has been determined),
 - (g) an individual who would be liable to removal or deportation from the United Kingdom but cannot be removed or deported because of section 6 of the Human Rights Act 1998 (c.42) or for practical reasons,
 - (h) an individual—
 - (i) against whom a decision to make a deportation order under section 5(1) of the Immigration Act 1971 (c.77) by virtue of section 3(5)(a) of that Act (deportation conducive to the public good) has been made,
 - (ii) who has appealed against the decision to make the order (whether or not the appeal has been determined), and

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- (iii) who is in the United Kingdom,
 - (i) an individual who is an illegal entrant within the meaning of section 33(1) of the Immigration Act 1971 or who is liable to removal under section 10 of the Immigration and Asylum Act 1999 (c.33),
 - (j) an individual who is detained in lawful custody in the United Kingdom.
- (3) When determining for the purposes of this Part whether any other individual is resident in the United Kingdom regard is to be had to all relevant considerations including—
- (a) the periods during which the individual is, has been or intends to be in the United Kingdom,
 - (b) the purposes for which the individual is, has been or intends to be in the United Kingdom,
 - (c) whether the individual has family or other connections to the United Kingdom and the nature of those connections, and
 - (d) whether the individual has an interest in residential property located in the United Kingdom.
- (4) In this section—
- “asylum claim” means—
- (a) a claim that it would be contrary to the United Kingdom’s obligations under the Refugee Convention for the claimant to be removed from, or required to leave, the United Kingdom,
 - (b) a claim that the claimant would face a real risk of serious harm if removed from the United Kingdom,
- “Convention rights” means the rights identified as Convention rights by section 1 of the Human Rights Act 1998,
- “detained in lawful custody” means—
- (a) detained in pursuance of a sentence of imprisonment or detention, a sentence of custody for life or a detention and training order,
 - (b) remanded in or committed to custody by an order of a court,
 - (c) detained pursuant to an order under section 2 of the Colonial Prisoners Removal Act 1884 (c.31) or a warrant under section 1 or 4A of the Repatriation of Prisoners Act 1984 (c.47),
 - (d) detained under Part 3 of the Mental Health Act 1983 (c.20) or by virtue of an order under section 5 of the Criminal Procedure (Insanity) Act 1964 (c.84) or section 6 or 14 of the Criminal Appeal Act 1968 (c.19) (hospital orders etc.),

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- (e) detained by virtue of an order under Part 6 of the Criminal Procedure (Scotland) Act 1995 (c.46) (other than an order under section 60C) or a hospital direction under section 59A of that Act, and includes detention by virtue of the special restrictions set out in Part 10 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) to which a person is subject by virtue of an order under section 59 of the Criminal Procedure (Scotland) Act 1995,
- (f) detained under Part 3 of the Mental Health (Northern Ireland) Order 1986 (SI 1986/595) or by virtue of an order under section 11 or 13(5A) of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47),

“human rights claim” means a claim that to remove the claimant from, or to require the claimant to leave, the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Convention) as being incompatible with the person’s Convention rights,

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention,

“serious harm” has the meaning given by article 15 of Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

- (5) In this section, a reference to having leave to enter or remain in the United Kingdom is to be construed in accordance with the Immigration Act 1971.
 - (6) This section applies in relation to any offence under this Part (whether committed before or after the coming into force of this section).”.
- (3) In section 28(1) (interpretation), the definitions of “United Kingdom national” and “United Kingdom resident” are repealed.>

Kenny MacAskill

108 After section 28, insert—

<Genocide, crimes against humanity and war crimes: retrospective application

After section 9 of the International Criminal Court (Scotland) Act 2001 (asp 13) insert—

“9A Retrospective application of certain offences

- (1) Section 1 of this Act applies to acts committed on or after 1 January 1991.

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- (2) But that section does not apply to an act committed before 17 December 2001 which constitutes a crime against humanity or a war crime within article 8.2(b) or (e) unless, at the time the act was committed, it amounted in the circumstances to a criminal offence under international law.
- (3) Section 2 of this Act applies to conduct engaged in on or after 1 January 1991.
- (4) The references in subsections (1), (3) and (5) of that section to an offence include an act or conduct that would not constitute an offence but for this section.
- (5) Any enactment or rule of law relating to an offence ancillary to a relevant offence applies—
 - (a) to conduct engaged in on or after 1 January 1991, and
 - (b) even if the act or conduct constituting the relevant offence would not constitute such an offence but for this section.
- (6) But section 2 of this Act, and any enactment or rule of law relating to an offence ancillary to a relevant offence, do not apply to—
 - (a) conduct engaged in before 17 December 2001, or
 - (b) conduct engaged in on or after that date which was ancillary to an act or conduct that—
 - (i) was committed or engaged in before that date, and
 - (ii) would not constitute a relevant offence but for this section,unless, at the time the conduct was engaged in, it amounted in the circumstances to a criminal offence under international law.
- (7) Section 5 of this Act, so far as it has effect in relation to relevant offences, applies—
 - (a) to failures to exercise control of the kind mentioned in subsection (2) or (3) of that section which occurred on or after 1 January 1991, and
 - (b) even if the act or conduct constituting the relevant offence would not constitute an offence but for this section.
- (8) But section 5 of this Act, so far as it has effect in relation to relevant offences, does not apply to a failure to exercise control of the kind mentioned in subsection (2) or (3) of that section which occurred before 17 December 2001 unless, at the time it occurred, it amounted in the circumstances to a criminal offence under international law.
- (9) In this section, “relevant offence” means an offence under section 1 or 2 of this Act or an offence ancillary to such an offence.

9B Provision supplemental to section 9A: modification of penalties

- (1) This section applies in relation to—

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- (a) an offence under section 1 of this Act on account of an act committed before 17 December 2001 constituting genocide, if at the time the act was committed it also amounted to an offence under section 1 of the Genocide Act 1969,
 - (b) an offence under section 1 of this Act on account of an act committed before 1 September 2001 constituting a war crime, if at the time the act was committed it also amounted to an offence under section 1 of the Geneva Conventions Act 1957 (c.52) (grave breaches of the Conventions),
 - (c) an offence ancillary to an offence within paragraph (a) or (b) above.
- (2) Section 3(5) of this Act has effect in relation to such an offence as if for “30 years” there were substituted “14 years”.”.>

Clarification of existing offence prohibiting the carrying of offensive weapons

Kenny MacAskill

109 After section 31, insert—

<Offensive weapons etc.

Offensive weapons etc.

- (1) The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) is amended as follows.
- (2) In section 47 (prohibition of the carrying of offensive weapons)—
 - (a) in subsection (1), the words from “without” to “him,” are repealed,
 - (b) after subsection (1), insert—

“(1A) It is a defence for a person charged with an offence under subsection (1) to show that the person had a reasonable excuse or lawful authority for having the weapon with the person in the public place.”, and
 - (c) for subsection (4), substitute—

“(4) In this section—

“offensive weapon” means any article—

 - (a) made or adapted for use for causing injury to a person, or
 - (b) intended, by the person having the article, for use for causing injury to a person by—
 - (i) the person having it, or
 - (ii) some other person,

“public place” means any place other than—

 - (a) domestic premises,
 - (b) school premises (within the meaning of section 49A(6)),
 - (c) a prison (within the meaning of section 49C(7)),

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“domestic premises” means premises occupied as a private dwelling (including any stair, passage, garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling).”.

- (3) In section 49 (offence of having in public place article with blade or point)—
 - (a) in subsection (4), for the words “prove that he had good reason” substitute “show that the person had a reasonable excuse”,
 - (b) in subsection (5), for “prove” substitute “show”, and
 - (c) for subsection (7), substitute—

“(7) In this section, “public place” has the same meaning as in section 47(4).”.
- (4) In section 49A (offence of having article with blade or point (or offensive weapon) on school premises)—
 - (a) in subsection (3), for the words “prove that he had good reason” substitute “show that the person had a reasonable excuse”, and
 - (b) in subsection (4), for “prove” substitute “show”.
- (5) In section 49C(2) (offence of having offensive weapon etc. in prison), for the words “prove that he had good reason” substitute “show that the person had a reasonable excuse”.
- (6) In section 50(4) (extension of constable’s power to stop, search and arrest without warrant), for “3” substitute “4”.>

Offence of having article with blade or point (or offensive weapon) on workplace premises

Johann Lamont

11* After section 31, insert—

<Offence of having article with blade or point (or offensive weapon) on workplace premises

- (1) The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) is amended as follows.
- (2) After section 49A, insert—

“49AA Offence of having article with blade or point (or offensive weapon) on workplace premises

- (1) Any person who has an article to which section 49 of this Act applies with him on workplace premises is guilty of an offence.
- (2) Any person who has an offensive weapon within the meaning of section 47 of this Act with him on workplace premises is guilty of an offence.

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- (3) It is a defence for a person charged with an offence under subsection (1) or (2) above to prove that he had good reason or lawful authority for having the article or weapon with him on the premises in question.
 - (4) Without prejudice to the generality of subsection (3) above, it is a defence for a person charged with an offence under subsection (1) or (2) above to prove that he had the article or weapon in question with him—
 - (a) for use at work (whether on the premises in question or otherwise),
 - (b) for religious reasons, or
 - (c) as part of any national costume.
 - (5) A person guilty of an offence—
 - (a) under subsection (1) above is liable—
 - (i) on summary conviction to imprisonment for a term not exceeding twelve months, or a fine not exceeding the statutory maximum, or both;
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding four years, or a fine, or both;
 - (b) under subsection (2) above is liable—
 - (i) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding four years, or a fine, or both.
 - (6) In this section and section 49B of this Act, “workplace premises” means any premises (other than school premises) used for the purposes of an undertaking carried on by an employer and made available to any employee of the employer as a place of work; and includes—
 - (a) any part of those premises to which such an employee has access while at work;
 - (b) any premises (other than a public road or other public place within the meaning of section 49 of this Act)—
 - (i) which are a means of access to or egress from the place of work; or
 - (ii) where facilities are provided for use in connection with the place of work.”.
- (3) In section 49B(1)—
 - (a) after “school premises” insert “or workplace premises”;
 - (b) after “49A” insert “or 49AA”.
 - (4) In section 50(3), for “or section 49A(1) or (2)” substitute “, 49A(1) or (2) or 49AA(1) or (2)”.>

THIS IS NOT THE MARSHALLED LIST

Extreme pornography – sounds accompanying images

Kenny MacAskill

- 361 In section 34, page 49, line 4, leave out <(and any sounds accompanying it)>

Kenny MacAskill

- 362 In section 34, page 49, line 5, leave out <(and any sounds accompanying them)>

Kenny MacAskill

- 363 In section 34, page 49, line 7, at end insert—
<and reference may also be had to any sounds accompanying the image or the series of images.>

Kenny MacAskill

- 364 In section 34, page 49, line 31, after <images> insert—
<(i) any sounds accompanying the series of images,
(ii)>

Kenny MacAskill

- 366 In section 34, page 50, line 18, after <images> insert—
<(i) any sounds accompanying the series of images,
(ii)>

Extreme pornography – excluded images

Robert Brown

- 365 In section 34, page 50, line 4, leave out from <“excluded” to <work> and insert <image is an “excluded image” if it is all or part of a classified work, and is so excluded from the time that an application for a classification certificate is received by the designated authority>

Kenny MacAskill

- 367 In section 34, page 50, line 19, leave out <and section 51C>

Kenny MacAskill

- 368 In section 34, page 50, line 27, leave out <and “extreme pornographic image” are> and insert <is>

Kenny MacAskill

- 369 In section 34, page 51, line 23, at end insert—
<() In this section “image” and “extreme pornographic image” are to be construed in accordance with section 51A.”.>

THIS IS NOT THE MARSHALLED LIST

Voyeurism – additional forms of conduct

Kenny MacAskill

110 After section 34, insert—

<Voyeurism: additional forms of conduct

- (1) The Sexual Offences (Scotland) Act 2009 (asp 9) is amended as follows.
 - (2) In section 9 (voyeurism)—
 - (a) after subsection (4), insert—

“(4A) The fourth thing is that A—

 - (a) without another person (“B”) consenting, and
 - (b) without any reasonable belief that B consents,

operates equipment beneath B’s clothing with the intention of enabling A or another person (“C”), for a purpose mentioned in subsection (7), to observe B’s genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B’s genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible.
 - (4B) The fifth thing is that A—
 - (a) without another person (“B”) consenting, and
 - (b) without any reasonable belief that B consents,

records an image beneath B’s clothing of B’s genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B’s genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person (“C”), for a purpose mentioned in subsection (7), will look at the image.”
 - (b) in subsection (5)—
 - (i) for “fourth” substitute “sixth”, and
 - (ii) for paragraph (b), substitute—

“(b) constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to do an act referred to in subsection (2), (3), (4), (4A) or (4B).”, and
 - (c) in subsection (7), for “and (4)” substitute “, (4), (4A) and (4B)”.
- (3) In section 10(2) (interpretation of section 9), after “section 9(3)” insert “and (4A)”.
- (4) In section 26 (voyeurism towards a young child)—
 - (a) after subsection (4), insert—

“(4A) The fourth thing is that A operates equipment beneath B’s clothing with the intention of enabling A or another person (“C”), for a purpose mentioned in subsection (7), to observe—

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- (a) B's genitals or buttocks (whether exposed or covered with underwear), or
 - (b) the underwear covering B's genitals or buttocks,
in circumstances where the genitals, buttocks or underwear would not otherwise be visible.
- (4B) The fifth thing is that A records an image beneath B's clothing of—
 - (a) B's genitals or buttocks (whether exposed or covered with underwear), or
 - (b) the underwear covering B's genitals or buttocks,
in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person ("C"), for a purpose mentioned in subsection (7), will look at the image."
- (b) in subsection (5)—
 - (i) for "fourth" substitute "sixth", and
 - (ii) for paragraph (b), substitute—
“(b) constructs or adapts a structure or part of a structure,
with the intention of enabling A or another person to do an act referred to in subsection (2), (3), (4), (4A) or (4B).”
- (c) in subsection (7), for “and (4)” substitute “, (4), (4A) and (4B)”, and
- (d) in subsection (8)—
 - (i) after “section 9(3)” insert “, (4A)”, and
 - (ii) after “subsections (3)” insert “, (4A)”.
- (5) In section 36 (voyeurism towards an older child)—
 - (a) after subsection (4), insert—
“(4A) The fourth thing is that A operates equipment beneath B's clothing with the intention of enabling A or another person ("C"), for a purpose mentioned in subsection (7), to observe—
 - (a) B's genitals or buttocks (whether exposed or covered with underwear), or
 - (b) the underwear covering B's genitals or buttocks,
in circumstances where the genitals, buttocks or underwear would not otherwise be visible.
 - (4B) The fifth thing is that A records an image beneath B's clothing of—
 - (a) B's genitals or buttocks (whether exposed or covered with underwear), or
 - (b) the underwear covering B's genitals or buttocks,
in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person ("C"), for a purpose mentioned in subsection (7), will look at the image.”
- (b) in subsection (5)—

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- (i) for “fourth” substitute “sixth”, and
- (ii) for paragraph (b), substitute—
 - “(b) constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to do an act referred to in subsection (2), (3), (4), (4A) or (4B).”.
- (c) in subsection (7), for “and (4)” substitute “, (4), (4A) and (4B)”, and
- (d) in subsection (8)—
 - (i) after “section 9(3)” insert “, (4A)”, and
 - (ii) after “subsections (3)” insert “, (4A)”.>

Sexual offences – defences in relation to offences against older children

Kenny MacAskill

111 After section 34, insert—

<Sexual offences: defences in relation to offences against older children

In section 39 of the Sexual Offences (Scotland) Act 2009 (asp 9) (defences in relation to offences against older children), in subsection (4)(c), after “section 30(2)(d)” insert “or (e)”.>

Penalties for offences of brothel-keeping and living on the earnings of prostitution

Kenny MacAskill

370 After section 34, insert—

<Penalties for offences of brothel-keeping and living on the earnings of prostitution

- (1) The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) is amended as follows.
- (2) In section 11 (trading in prostitution and brothel-keeping)—
 - (a) in subsection (1), for the words from “liable” to the end substitute “guilty of an offence and liable to the penalties set out in subsection (1A)”,
 - (b) after that subsection insert—
 - “(1A) A person—
 - (a) guilty of the offence set out in subsection (1)(a) is liable—
 - (i) on conviction on indictment, to imprisonment for a term not exceeding seven years, to a fine, or to both,
 - (ii) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both,

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- (b) guilty of the offence set out in subsection (1)(b) is liable—
 - (i) on conviction on indictment, to imprisonment for a term not exceeding two years,
 - (ii) on summary conviction, to imprisonment for a term not exceeding 12 months.”,
- (c) in subsection (4), for “subsection (1)” substitute “subsection (1A)(a)”, and
- (d) for subsection (6) substitute—

“(6) A person guilty of an offence under subsection (5) is liable—

 - (a) on conviction on indictment, to imprisonment for a term not exceeding seven years, to a fine, or to both,
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both.”.
- (3) In section 13(9) (living on earnings of another from male prostitution), for paragraphs (a) and (b) substitute—

“(a) on conviction on indictment, to imprisonment for a term not exceeding seven years, to a fine, or to both,

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both.”.>

Engaging in, advertising and facilitating paid-for sexual activities

Trish Godman

8* After section 34, insert—

<Offences of engaging in, advertising and facilitating paid-for sexual activities

- (1) The Sexual Offences (Scotland) Act 2009 (asp 9) is amended as follows.
- (2) After section 11 insert—

“Engaging in, advertising and facilitating paid-for sexual activities

11A Engaging in a paid-for sexual activity

- (1) A person (“A”) commits an offence, to be known as the offence of engaging in a paid-for sexual activity, if A knowingly engages in a paid-for sexual activity with another person (“B”).
- (2) A sexual activity is paid for where B engages in that activity in exchange for payment.
- (3) For the purposes of subsection (2), it is immaterial whether the payment is made—
 - (a) by A or by another person, or
 - (b) to B or to another person on B’s behalf.

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11B Advertising paid-for sexual activities

A person commits an offence, to be known as the offence of advertising paid-for sexual activities, if that person knowingly advertises, by any means, the availability of sexual activities that can be engaged in for payment.

11C Facilitating engagement in a paid-for sexual activity

- (1) A person (“A”) commits an offence, to be known as the offence of facilitating engagement in a paid-for sexual activity, if A knowingly facilitates the engagement of another person (“B”) in a paid-for sexual activity with another person (“C”).
- (2) A sexual activity is paid for where C engages in that activity in exchange for payment.
- (3) For the purposes of subsection (2), it is immaterial whether the payment is made—
 - (a) by A, by B or by another person, or
 - (b) to C or to another person on C’s behalf.
- (4) For the purposes of subsection (1), facilitating the engagement by B in a paid-for sexual activity includes (but is not limited to)—
 - (a) arranging B’s engagement in the activity,
 - (b) making payment to C or to another person on C’s behalf,
 - (c) making available premises in which the activity takes place, or
 - (d) transporting B, or arranging transport for B, to where the activity takes place.

11D Arrest for offences under sections 11A to 11C

- (1) Where a constable reasonably believes that a person is committing or has committed an offence under section 11A, 11B or 11C, the constable may arrest the person without warrant.
- (2) Subsection (1) is without prejudice to any power of arrest conferred by law apart from that subsection.”.
- (3) In the table in schedule 2 insert at the appropriate place—

“Engaging in a paid-for sexual activity	Section 11A	A fine not exceeding level 3 on the standard scale	
Advertising paid-for sexual activities	Section 11B	A fine not exceeding level 3 on the standard scale	
Facilitating engagement in a paid-for sexual activity	Section 11C	A fine not exceeding level 3 on the standard scale”.>	

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Margo MacDonald

8A As an amendment to amendment 8, line 15, at end insert—

<11AA Causing alarm etc. by engaging in a paid-for sexual activity

In the circumstances described in section 11A(1), A and B commit an offence, to be known as the offence of causing alarm etc. by engaging in a paid-for sexual activity, if their engaging in the activity that constitutes the offence under that section causes alarm to another person (“C”), endangers C or creates a nuisance for C.>

Margo MacDonald

8B As an amendment to amendment 8, line 15, at end insert—

<11AB Profiting from coerced paid-for sexual activities

A person commits an offence, to be known as the offence of profiting from coerced paid-for sexual activities, if that person knowingly secures a direct benefit (whether financial or otherwise) from a paid-for sexual activity involving a person whose engagement in that activity has been secured as a result of coercion.>

Margo MacDonald

8C As an amendment to amendment 8, line 40, after <11A,> insert <11AA, 11AB>

Margo MacDonald

8D As an amendment to amendment 8, line 48, at end insert—

<“Causing alarm etc. by engaging in a paid-for sexual activity	Section 11AA	A fine not exceeding level 3 on the standard scale	
Profiting from coerced paid-for sexual activities	Section 11AB	A fine not exceeding level 3 on the standard scale>	

Trish Godman

9 In section 72, page 94, line 39, at end insert <, other than an offence under section 11A (engaging in a paid-for sexual activity) or 11B (advertising paid-for sexual activities)>

Margo MacDonald

9A As an amendment to amendment 9, line 2, after <activity)> insert <, 11AA (causing alarm etc. by engaging in a paid-for sexual activity)>

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People trafficking (and consequential provision)

Kenny MacAskill

371 In section 35, page 51, line 30, at end insert—

<() after subsection (1) insert—

“(1A) A person to whom subsection (6) applies commits an offence if the person arranges or facilitates—

(a) the arrival in or the entry into a country (other than the United Kingdom), or travel there (whether or not following such arrival or entry) by, an individual and—

(i) intends to exercise control over prostitution by the individual or to involve the individual in the making or production of obscene or indecent material; or

(ii) believes that another person is likely to exercise such control or so to involve the individual,

there or elsewhere; or

(b) the departure from a country (other than the United Kingdom) of an individual and—

(i) intends to exercise such control or so to involve the individual; or

(ii) believes that another person is likely to exercise such control or so to involve the individual,

outwith the country.”>

Kenny MacAskill

372 In section 35, page 51, line 30, at end insert—

<() in subsection (2), for “subsection (1)” substitute “subsections (1) and (1A)”>

Kenny MacAskill

373 In section 35, page 51, line 32, leave out <Subsection (1) applies> and insert <Subsections (1) and (1A) apply>

Kenny MacAskill

374 In section 35, page 51, line 34, leave out <proceeded against, indicted> and insert <prosecuted>

Kenny MacAskill

375 In section 35, page 51, line 40, after <on> insert <the>

Kenny MacAskill

376 In section 35, page 52, leave out line 1 and insert—

<() in subsection (6)—

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- (i) the word “and” immediately following paragraph (e) is repealed, and
- (ii) after paragraph (f) insert—
 - “(g) a person who at the time of the offence was habitually resident in Scotland, and
 - (h) a body incorporated under the law of a part of the United Kingdom.”.>

Kenny MacAskill

377 In section 35, page 52, line 2, leave out subsection (2) and insert—

<() In section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) (trafficking people for exploitation)—

- (a) in subsection (1), after “arrival in” insert “or the entry into”,
- (b) in subsection (2), the words from “in” where it first occurs to “committed” are repealed,
- (c) after subsection (3) insert—

“(3A) A person to whom section 5(2) applies commits an offence if—

- (a) in relation to an individual (the “passenger”), he arranges or facilitates—
 - (i) the arrival in or the entry into a country other than the United Kingdom of the passenger,
 - (ii) travel by the passenger within a country other than the United Kingdom,
 - (iii) the departure of the passenger from a country other than the United Kingdom, and
- (b) he—
 - (i) intends to exploit the passenger, or
 - (ii) believes that another person is likely to exploit the passenger,(wherever the exploitation is to occur).”,

(d) in subsection (4)—

- (i) in paragraph (b), the words from “as a result” to “Act 2004,” become sub-paragraph (i),
- (ii) immediately following that sub-paragraph insert “or—
 - (ii) which, were it done in Scotland, would constitute an offence mentioned in sub-paragraph (i),”,
- (iii) after paragraph (b) insert—

“(ba) he is encouraged, required or expected to do anything in connection with the removal of any part of a human body—

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- (i) as a result of which he or another person would commit an offence under the law of Scotland (other than an offence mentioned in paragraph (b)(i)), or
- (ii) which, were it done in Scotland, would constitute such an offence,” and
- (iv) for paragraph (d) substitute—
 - “(d) another person uses or attempts to use him for any purpose within sub-paragraph (i), (ii) or (iii) of paragraph (c), having chosen him for that purpose on the grounds that—
 - (i) he is mentally or physically ill or disabled, he is young, or he has a family relationship with a person, and
 - (ii) a person without the illness, disability, youth or family relationship would be likely to refuse to be used for that purpose.”.
- () In section 5 of that Act—
 - (a) in subsection (1), for the words from “(3)” to the end substitute “(3A) of section 4 apply to anything done in or outwith the United Kingdom.”,
 - (b) in subsection (2)—
 - (i) the word “and” immediately following paragraph (e) is repealed, and
 - (ii) after paragraph (f) insert—
 - “(g) a person who at the time of the offence was habitually resident in Scotland, and
 - (h) a body incorporated under the law of a part of the United Kingdom.”,
 - (c) after subsection (2) insert—
 - “(2A) A person may be prosecuted, tried and punished for any offence to which section 4 applies—
 - (a) in any sheriff court district in which the person is apprehended or is in custody, or
 - (b) in such sheriff court district as the Lord Advocate may determine,as if the offence had been committed in that district (and the offence is, for all purposes incidental to or consequential on the trial or punishment, to be deemed to have been committed in that district).
 - (2B) In subsection (2A), “sheriff court district” is to be construed in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c.46) (interpretation).”.>

Kenny MacAskill

386 In schedule 5, page 153, line 35, at end insert—

<In section 11 (certain offences committed outside Scotland)—

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- (a) in subsection (3), for “proceeded against, indicted” substitute “prosecuted”,
- (b) in subsection (4), for “dealt with, indicted” substitute “prosecuted”.>

Kenny MacAskill

387 In schedule 5, page 159, line 12, at end insert—

<The Sexual Offences (Scotland) Act 2009 (asp 9)

In section 55(7) of the Sexual Offences (Scotland) Act 2009 (offences committed outside the United Kingdom), for “proceeded against, indicted” substitute “prosecuted”.>

Slavery, servitude and forced or compulsory labour

Kenny MacAskill

112 After section 35, insert—

<Slavery, servitude and forced or compulsory labour

Slavery, servitude and forced or compulsory labour

- (1) A person (“A”) commits an offence if—
 - (a) A holds another person in slavery or servitude and the circumstances are such that A knows or ought to know that the person is so held, or
 - (b) A requires another person to perform forced or compulsory labour and the circumstances are such that A knows or ought to know that the person is being required to perform such labour.
- (2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention (which prohibits a person from being held in slavery or servitude or being required to perform forced or compulsory labour).
- (3) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, or to a fine, or to both,
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.
- (4) In this section “Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950.>

Kenny MacAskill

143 In section 72, page 95, line 3, at end insert—

<() an offence under section (Slavery, servitude and forced or compulsory labour) (slavery, servitude and forced or compulsory labour) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 00).>

THIS IS NOT THE MARSHALLED LIST

Articles for use in fraud

Kenny MacAskill

113 After section 36, insert—

<Articles for use in fraud

- (1) A person (“A”) commits an offence if A has in A’s possession or under A’s control an article for use in, or in connection with, the commission of fraud.
- (2) A person guilty of an offence under subsection (1) is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both,
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.
- (3) A person commits an offence if the person makes, adapts, supplies or offers to supply an article—
 - (a) knowing that the article is designed or adapted for use in, or in connection with, the commission of fraud, or
 - (b) intending the article to be used in, or in connection with, the commission of fraud.
- (4) A person guilty of an offence under subsection (3) is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both,
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine, or to both.
- (5) In this section, “article” includes a program or data held in electronic form.>

Abolition of offences of sedition and leasing-making

Kenny MacAskill

114 After section 37, insert—

<Abolition of offences of sedition and leasing-making

Abolition of offences of sedition and leasing-making

The following offences under the common law of Scotland are abolished—

- (a) the offence of sedition,
- (b) the offence of leasing-making.>

Kenny MacAskill

189 In schedule 5, page 151, line 35, at end insert—

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<The Libel Act 1792 (c.60)

The Libel Act 1792 is repealed.

The Criminal Libel Act 1819 (c.8)

The Criminal Libel Act 1819 is repealed.

The Defamation Act 1952 (c.66)

In the Defamation Act 1952, section 17(2) is repealed.>

Kenny MacAskill

192 In schedule 5, page 153, line 3, at end insert—

<The Trade Union and Labour Relations (Consolidation) Act 1992 (c.52)

In section 243(4)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992 (restriction of offence of conspiracy: Scotland), the words “or sedition” are repealed.>

Kenny MacAskill

194 In schedule 5, page 157, line 8, at end insert—

<The Defamation Act 1996 (c.31)

In the Defamation Act 1996, section 20(2) is repealed.>

Kenny MacAskill

196 In schedule 5, page 157, line 28, at end insert—

<The Legal Deposit Libraries Act 2003 (c.28)

Section 10 of the Legal Deposit Libraries Act 2003 (exemption from liability: activities in relation to publications) is amended as follows—

- (a) in subsection (1), the words “, or subject to any criminal liability,” are repealed,
- (b) in subsection (2)(a), the words “in the case of liability in damages” are repealed,
- (c) in subsection (3), the words “, or subject to any criminal liability,” are repealed,
- (d) in subsection (4)(a), the words “in the case of liability in damages” are repealed,
- (e) in subsection (6)(a), the words “, or subject to any criminal liability,” are repealed, and
- (f) in subsection (8), the words “and criminal liability” are repealed.>

