

Criminal Justice and Licensing (Scotland) Bill

4th Groupings of Amendments for Stage 2

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

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

Groupings of amendments

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Notes on amendments in this group

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Amendment 410 pre-empts amendments 380, 483, 484 and 545

Amendment 380 pre-empts amendments 483 and 484

Amendment 411 pre-empts amendments 546, 487, 488, 489, 490, 491, 492 and 382

Amendment 492 pre-empts amendment 382

Amendment 493 pre-empts amendment 412

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With 105 – 184

Involvement in serious organised crime

With 344 - 358

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Amendments in debating order

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)>

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.>

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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—

“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—

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- (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
 - (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.
- (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.

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- (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—
 - (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.

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- (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)),
- “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).”.

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- (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”.>

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.
- (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—

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- (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)”.>

Kenny MacAskill

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

<*The Offensive Weapons Act 1996 (c.26)*

In the Offensive Weapons Act 1996, section 5 is repealed.>

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.>

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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.”.>

Extreme pornography – sex offender notification

Kenny MacAskill

- 517** In section 34, page 51, line 23, at end insert—
- <() In Schedule 3 to the Sexual Offences Act 2003 (c.42) (sexual offences for the purposes of Part 2 of that Act), after paragraph 44 insert—
 - “44A An offence under section 51A of the Civic Government (Scotland) Act 1982 (c.45) (possession of extreme pornography) if—
 - (a) the offender—
 - (i) was 18 or over, and
 - (ii) is or has been sentenced in respect of the offence to imprisonment for a term of more than 12 months, and

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- (b) in imposing sentence, the court determines that it is appropriate that Part 2 of this Act should apply in relation to the offender.”>

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,
 - (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,

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- (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.

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.

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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”.>	

Margo MacDonald

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

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<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>	

Nigel Don

461 After section 34, insert—

<Offence of paying for sexual services of a prostitute subjected to force etc.

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

“Paying for sexual services of a prostitute subjected to force etc.

11E Paying for sexual services of a prostitute subjected to force etc.

- (1) A person (“A”) commits an offence, to be known as the offence of paying for sexual services of a coerced prostitute, if—
 - (a) A makes or promises payment for the sexual services of a prostitute (“B”),
 - (b) a third person (“C”) has engaged in exploitative conduct of a kind likely to induce or encourage B to provide the sexual services for which A has made or promised payment, and

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- (c) C engaged in that conduct for or in the expectation of gain for C or another person (apart from A or B).
- (2) The following are irrelevant—
 - (a) where in the world the sexual services are to be provided and whether those services are provided,
 - (b) whether A is, or ought to be, aware that C has engaged in exploitative conduct.
- (3) C engages in exploitative conduct if—
 - (a) C uses force, threats (whether or not relating to violence) or any other form of coercion, or
 - (b) C practises any form of deception.”.
- (3) In the table in schedule 2 insert at the appropriate place—

“Paying for sexual services of a coerced prostitute	Section 11E	A fine not exceeding level 3 on the standard scale”.>	
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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)>

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,

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- (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)—

- (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—

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- (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—
 - (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.”

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(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)—

(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).

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- (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).>

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.>

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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—

<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,

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- (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.>

Double jeopardy (Scottish Law Commission report)

Bill Aitken

115 After section 37, insert—

<PART

DOUBLE JEOPARDY

Rule against double jeopardy

- (1) It is not competent to charge a person who, whether on indictment or complaint (the “original” indictment or complaint), has been convicted or acquitted of an offence—
 - (a) with an offence of which it would have been competent to convict the person on the original indictment or complaint, or
 - (b) with an offence which—
 - (i) arises out of the same, or largely the same, acts or omissions as gave rise to the original indictment or complaint, and
 - (ii) is an aggravated way of committing the offence of which the person was convicted or acquitted.
- (2) Whether the conviction or acquittal was before or after the coming into force of this section is, for the purposes of the section, immaterial.
- (3) Subsection (1) is subject to sections (*Tainted acquittals*), (*Admission subsequent to acquittal*) and (*New evidence*) and is without prejudice to sections 118(1)(c) (disposal of appeals), 119 (provision where High Court authorises new prosecution), 183(1)(d) (stated case: disposal of appeal) and 185 (authorisation of new prosecution) of the 1995 Act.
- (4) In this Part, reference to a person being convicted of an offence is—
 - (a) to the person being found guilty of the offence, or
 - (b) to the prosecutor accepting the person’s plea of guilty to the offence,in either case whether or not sentence is passed.>

Bill Aitken

116 After section 37, insert—

<Plea in bar of trial

- (1) A person charged with an offence—
 - (a) whether on indictment or complaint, but
 - (b) other than by virtue of a section mentioned in section (*Rule against double jeopardy*)(3),

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may aver, as a plea in bar of trial, that the offence arises out of the same, or largely the same, acts or omissions as have already given rise to the person being tried for, and convicted or acquitted of, an offence (the “original offence”).

- (2) Whether the conviction or acquittal was before or after the coming into force of this section is, for the purposes of the section, immaterial.
- (3) If the court is satisfied, on a balance of probabilities, as to the truth of the person’s averment, the plea is to be sustained unless the prosecutor persuades the court that there is some special reason why the case should proceed to trial (as for example, but without prejudice to the generality of this subsection, where trials were separated on the application of, or with the consent of, the person).
- (4) Subsections (1) to (3) apply irrespective of where the person was tried; but this subsection is subject to subsection (5).
- (5) Where the person was tried outwith the United Kingdom the court may disregard a conviction or acquittal if—
 - (a) it determines that it is in the interests of justice to do so, and
 - (b) to permit the case to proceed to trial would not be inconsistent with the obligations of the United Kingdom under Article 54 of the Schengen Convention (that is to say, of the Convention of 19th June 1990 implementing the Schengen Agreement of 14th June 1985).
- (6) In making a determination in pursuance of subsection (5)(a), the court is in particular to have regard to—
 - (a) whether the purpose of bringing the person to trial in the foreign country appears to have been to assist the person to evade justice,
 - (b) whether the proceedings in the foreign country appear to have been conducted—
 - (i) independently and impartially, and
 - (ii) in a manner consistent with dealing justly with the person,
 - (c) whether such sentence (or other disposal) as might be imposed in the foreign country for an offence of the kind for which the person has been acquitted or convicted is commensurate with any that might be imposed for an offence of that kind in Scotland, and
 - (d) the extent to which the acts or omissions can be considered to have occurred in, respectively—
 - (i) Scotland,
 - (ii) the foreign country.>

Bill Aitken

117 After section 37, insert—

<Eventual death of injured person

- (1) This section applies where—
 - (a) a person (“A”) sustains physical injuries,
 - (b) another person (“B”) is, whether on indictment or complaint, acquitted or convicted of an offence (“offence Y”) which comprises the infliction of the injuries, and

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- (c) after the acquittal or conviction A dies, ostensibly from the injuries.
- (2) Whether the conviction or acquittal was before or after the coming into force of this section is, for the purposes of the section, immaterial.
- (3) If B was acquitted of offence Y (and was not then convicted of a different offence, “offence Z”, which comprised the infliction of the injuries) it is not competent to charge B with—
 - (a) the murder of A,
 - (b) culpable homicide as respects A, or
 - (c) any other offence comprising causing A’s death.
- (4) If B was convicted of offence Y (or of offence Z), then—
 - (a) for the purposes of sections (*Rule against double jeopardy*) and (*Plea in bar of trial*) the offences mentioned in paragraphs (a) to (c) of subsection (3) are not to be treated as offences arising out of the same, or largely the same, acts or omissions as the offence of which B was convicted, but
 - (b) on B being acquitted or convicted of any of the offences mentioned in those paragraphs, the court may, on the motion of B and after hearing the parties on that motion, quash B’s conviction of offence Y (or offence Z) where satisfied that it is appropriate to do so.
- (5) A party may appeal to the High Court against the granting or refusing of a motion under subsection (4)(b).>

Bill Aitken

118 After section 37, insert—

<Tainted acquittals

- (1) A person who, whether on indictment or complaint (the “original” indictment or complaint), has been acquitted of an offence (the “original offence”) may, provided that the conditions mentioned in subsection (3) are satisfied, be charged with, and prosecuted anew for—
 - (a) the original offence, or
 - (b) an offence arising out of the same, or largely the same, acts or omissions as gave rise to the original offence.
- (2) Whether the acquittal was before or after the coming into force of this section is, for the purposes of the section, immaterial.
- (3) The conditions are—
 - (a) either—
 - (i) that the acquitted person or some other person has (or the acquitted person and some other person have) been convicted of an offence against the course of justice, being an offence in connection with proceedings on the original indictment or complaint, or
 - (ii) that on the application of the Lord Advocate the High Court has concluded on a balance of probabilities that the acquitted person or some other person has (or the acquitted person and some other person have) committed such an offence against the course of justice, and

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- (b) that on the application of the Lord Advocate the High Court has—
 - (i) set aside the acquittal, and
 - (ii) granted authority to bring, by virtue of this section, a new prosecution.
- (4) On making an application under subsection (3), the Lord Advocate is to send a copy of that application to the acquitted person.
- (5) The acquitted person is entitled to appear or to be represented at any hearing of the application.
- (6) For the purpose of—
 - (a) hearing and coming to a conclusion on any application under subsection (3)(a)(ii),
or
 - (b) hearing and determining any application under subsection (3)(b),three of the Lords Commissioners of Justiciary are a quorum of the Court (the application being determined by majority vote of those sitting).
- (7) The decision of the Court on the application is final.
- (8) Subsection (7) is without prejudice to any power of those sitting to remit the application to a differently constituted sitting of the Court (as for example to the whole Court sitting together).
- (9) The Court may appoint counsel to act as *amicus curiae* at the hearing in question.
- (10) Subsections (11) and (12) apply in a case where (or as the case may be where the Court, in coming to a conclusion under subsection (3)(a)(ii), is satisfied on a balance of probabilities that) the offence against the course of justice consisted of or included interference with a juror or with the trial judge.
- (11) An acquittal is to be set aside under subsection (3)(b)(i) if the Court is unable to conclude that the interference had no effect on the outcome of the proceedings on the original indictment or complaint.
- (12) But it is not to be so set aside if in the course of the trial, the interference (being interference with a juror and not with the trial judge) became known to the trial judge, who then allowed the trial to proceed to its conclusion.
- (13) Subsection (14) applies in a case other than is mentioned in subsection (10).
- (14) An acquittal is not to be set aside under subsection (3)(b)(i) unless the Court is satisfied on a balance of probabilities—
 - (a) that the offence led—
 - (i) to the withholding of evidence which, had it been given, would have been,
or
 - (ii) to the giving of false evidence which was,
evidence capable of being regarded as credible and reliable by a reasonable jury,
and
 - (b) that the withholding, or as the case may be the giving, of the evidence was likely to have had a material effect on the outcome of the proceedings on the original indictment or complaint.

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- (15) And an acquittal is not to be set aside under subsection (3)(b)(i), whether by virtue of subsections (10) to (12) or by virtue of subsections (13) and (14), if the court considers that setting it aside would be contrary to the interests of justice.
- (16) In this section, the expression “offence against the course of justice”—
- (a) means an offence of perverting, or of attempting to pervert, the course of justice (by whatever means and however the offence is described), and
 - (b) without prejudice to the generality of paragraph (a), includes—
 - (i) an offence under section 45(1) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) (aiding, abetting, counselling, procuring or suborning the commission of an offence under section 44 of that Act),
 - (ii) the crime of subornation of perjury, and
 - (iii) the crime of bribery.
- (17) But the expression does not include—
- (a) the crime of perjury, or
 - (b) an offence under section 44(1) of that Act (statement on oath which is false or which the person making it does not believe to be true).>

Bill Aitken

119 After section 37, insert—

<Further provision as regards prosecution by virtue of section (*Tainted acquittals*)

- (1) A prosecution may be brought by virtue of section (*Tainted acquittals*) notwithstanding that any time limit for the commencement of such proceedings has elapsed.
- (2) In proceedings in a prosecution brought by virtue of section (*Tainted acquittals*) it is competent for either party to lead evidence which it was competent for that party to lead in the earlier proceedings.
- (3) But the indictment or complaint in the prosecution is to identify any matters as respects which the prosecutor intends to lead evidence by virtue of subsection (2) (being matters as respects which it would not have been competent to lead evidence but for that subsection).
- (4) On granting authority under section (*Tainted acquittals*)(3)(b)(ii) to bring a new prosecution, the High Court may, after giving the parties an opportunity of being heard, order the detention of the accused person in custody or admit that person to bail.
- (5) In—
 - (a) solemn proceedings, section 65(4)(aa) and (b) and (4A) to (9), and
 - (b) summary proceedings, section 147,of the 1995 Act (prevention of delay in trials) applies to an accused person who is detained under subsection (4) as it applies to an accused person detained by virtue of being committed until liberated in due course of law.>

Bill Aitken

120 After section 37, insert—

THIS IS NOT THE MARSHALLED LIST

<Admission subsequent to acquittal

- (1) A person who, whether on indictment or complaint (the “original” indictment or complaint), has been acquitted of an offence but subsequently admits to committing it may, provided that the condition mentioned in subsection (3) is satisfied, be charged with, and prosecuted anew for, the offence.
- (2) Whether the acquittal was before or after the coming into force of this section is, for the purposes of the section, immaterial.
- (3) The condition is that on the application of the Lord Advocate the High Court has—
 - (a) set aside the acquittal, and
 - (b) granted authority to bring, by virtue of this section, a new prosecution.
- (4) On making an application under subsection (3), the Lord Advocate is to send a copy of that application to the acquitted person.
- (5) The acquitted person is entitled to appear or to be represented at any hearing of the application.
- (6) For the purpose of hearing and determining the application, three of the Lords Commissioners of Justiciary are a quorum of the Court (the application being determined by majority vote of those sitting).
- (7) An acquittal is not to be set aside under subsection (3)(a) unless the Court is satisfied—
 - (a) on a balance of probabilities, that subsequent to the acquittal the person credibly admitted having committed the offence, and
 - (b) that evidence is available sufficient to corroborate the admission.
- (8) Even if the Court is satisfied as is mentioned in subsection (7), it is not to set aside the acquittal if it considers that to do so would be contrary to the interests of justice.>

Robert Brown

120A As an amendment to amendment 120, line 15, at end insert—

- <() Before hearing an application under subsection (3), the Court is to order that no publicity be given to the application, or to any document prepared in connection with the application, until—
- (a) the application is refused,
 - (b) a final decision has been made not to bring, or to discontinue, a new prosecution, or
 - (c) the new trial is concluded.>

Bill Aitken

121 After section 37, insert—

<Further provision as regards prosecution by virtue of section (*Admission subsequent to acquittal*)

- (1) No sentence may be passed on conviction in a new prosecution brought by virtue of section (*Admission subsequent to acquittal*) which could not have been passed under the proceedings on the original indictment or complaint (“the earlier proceedings”).

THIS IS NOT THE MARSHALLED LIST

- (2) A new prosecution may be brought by virtue of section (*Admission subsequent to acquittal*) notwithstanding that any time limit, other than the time limit mentioned in subsection (3), for the commencement of such proceedings has elapsed.
- (3) Proceedings in a new prosecution brought by virtue of section (*Admission subsequent to acquittal*) are to be commenced within 2 months after the date on which authority to bring the prosecution was granted.
- (4) In proceedings in a new prosecution brought by virtue of section (*Admission subsequent to acquittal*) it is competent for either party to lead evidence which it was competent for that party to lead in the earlier proceedings.
- (5) But the indictment or complaint in the new prosecution is to identify any matters as respects which the prosecutor intends to lead evidence by virtue of subsection (4) (being matters as respects which it would not have been competent to lead evidence but for that subsection).
- (6) For the purposes of subsection (3), proceedings are deemed commenced—
 - (a) in a case where a warrant to apprehend the accused is granted—
 - (i) on the date on which the warrant is executed, or
 - (ii) if it is executed without unreasonable delay, on the date on which it is granted, and
 - (b) in any other case, on the date on which the accused is cited.
- (7) Where the 2 months mentioned in subsection (3) elapse and no new prosecution has been brought under this section, the order under section (*Admission subsequent to acquittal*)(3)(a) setting aside the acquittal has the effect, for all purposes, of an acquittal.
- (8) On granting authority under section (*Admission subsequent to acquittal*)(3)(b) to bring a new prosecution, the High Court may, after giving the parties an opportunity of being heard, order the detention of the accused person in custody or admit that person to bail.
- (9) In—
 - (a) solemn proceedings, section 65(4)(aa) and (b) and (4A) to (9), and
 - (b) summary proceedings, section 147,of the 1995 Act (prevention of delay in trials) applies to an accused person who is detained under subsection (8) as it applies to an accused person detained by virtue of being committed until liberated in due course of law.
- (10) It is immaterial, for the purposes of this section, whether the acquittal was before or after the coming into force of the section.>

Bill Aitken

122 After section 37, insert—

<New evidence

- (1) A person who has been acquitted, after the coming into force of this section (or on the day on which it comes into force), of an offence may—
 - (a) if there is new evidence that the person committed the offence, and
 - (b) the conditions mentioned in subsection (2) are satisfied,be charged with, and prosecuted for, the offence anew.

THIS IS NOT THE MARSHALLED LIST

- (2) The conditions are—
 - (a) that the person’s acquittal was of an offence mentioned in subsection (9), and
 - (b) that on the application of the Lord Advocate the High Court has—
 - (i) set aside the acquittal, and
 - (ii) granted authority to bring, by virtue of this section, a new prosecution.
- (3) The setting aside of the acquittal and the granting of such authority may, under subsection (2)(b), be applied for on one occasion only.
- (4) On making an application under that subsection, the Lord Advocate is to send a copy of the application to the acquitted person.
- (5) The acquitted person is entitled to appear or to be represented at any hearing of the application.
- (6) For the purpose of hearing and determining the application under subsection (2)(b), three of the Lords Commissioners of Justiciary are a quorum of the Court (the application being determined by majority vote of those sitting).
- (7) An acquittal is not to be set aside under subsection (2)(b)(i) unless the Court is satisfied that—
 - (a) the case against the accused is strengthened substantially by the new evidence,
 - (b) the new evidence is evidence which was not available, and could not with the exercise of reasonable diligence have been made available, at the trial in respect of the original offence, and
 - (c) on the new evidence and the evidence which was led at that trial it is highly likely that a reasonable jury properly instructed would have convicted the person of the offence.
- (8) Even if the Court is satisfied as is mentioned in subsection (7), it is not to set aside the acquittal if it considers that to do so would be contrary to the interests of justice.
- (9) The offences are—
 - (a) murder,
 - (b) at common law, rape, and
 - (c) an offence under either section 1 (rape) or section 18 (rape of a young child) of the Sexual Offences (Scotland) Act 2009 (asp 9).
- (10) The Scottish Ministers may by order amend subsection (9) so as to add further offences to those for the time being mentioned in that subsection.
- (11) But subsection (1) does not apply as respects a person’s acquittal of an offence so added if the date of acquittal is earlier than that on which the addition is effected.>

Bill Aitken

123 After section 37, insert—

<Further provision as regards prosecution by virtue of section (*New evidence*)>

- (1) No sentence may be passed on conviction in a new prosecution brought by virtue of section (*New evidence*) which could not have been passed under the indictment on the trial of which the person was acquitted of the offence in question.

THIS IS NOT THE MARSHALLED LIST

- (2) A new prosecution may be brought by virtue of section (*New evidence*) notwithstanding that any time limit for the commencement of such proceedings, other than the time limit mentioned in subsection (3), has elapsed.
- (3) Proceedings in a new prosecution brought by virtue of section (*New evidence*) are to be commenced within 2 months after the date on which authority to bring the prosecution was granted.
- (4) In proceedings in a new prosecution brought by virtue of section (*New evidence*) it is competent for either party to lead evidence which it was competent for that party to lead in the earlier proceedings.
- (5) But the indictment in the new prosecution is to identify any matters as respects which the prosecutor intends to lead evidence by virtue of subsection (4) (being matters as respects which it would not have been competent to lead evidence but for that subsection).
- (6) For the purposes of subsection (3), proceedings are deemed commenced—
 - (a) in a case where a warrant to apprehend the accused is granted—
 - (i) on the date on which the warrant is executed, or
 - (ii) if it is executed without unreasonable delay, on the date on which it is granted, and
 - (b) in any other case, on the date on which the accused is cited.
- (7) Where the 2 months mentioned in subsection (3) elapse and no new prosecution has been brought under this section, the order under section (*New evidence*)(2)(b)(i) setting aside the acquittal has the effect, for all purposes, of an acquittal.
- (8) On granting authority under section (*New evidence*)(2)(b)(ii) to bring a new prosecution, the High Court is, after giving the parties an opportunity of being heard, to order the detention of the accused person in custody or to admit that person to bail.
- (9) Subsections (4)(aa) and (b) and (4A) to (9) of section 65 of the 1995 Act (prevention of delay in trials) apply to an accused person who is detained under subsection (8) as they apply to an accused person detained by virtue of being committed until liberated in due course of law.>

Bill Aitken

124 After section 37, insert—

<Nullity of proceedings on previous indictment or complaint

- (1) Subsection (3) applies where—
 - (a) a person has, whether on indictment or complaint—
 - (i) been charged with, and
 - (ii) acquitted or convicted of, an offence, and
 - (b) the conditions mentioned in subsection (4) are satisfied.
- (2) Whether the conviction or acquittal was before or after the coming into force of this section is, for the purposes of the section, immaterial.
- (3) The person may be charged with, and prosecuted anew for, the offence.
- (4) The conditions are that, on the application of the prosecutor and after hearing the parties, the High Court is satisfied—

THIS IS NOT THE MARSHALLED LIST

- (a) that the proceedings on the indictment or complaint were a nullity, and
- (b) that it would not be contrary to the interests of justice to proceed as mentioned in subsection (3).>

Bill Aitken

125 After section 37, insert—

<Amendment of Schedule 1 to the Contempt of Court Act 1981

- (1) Schedule 1 to the Contempt of Court Act 1981 (c.49) (times when proceedings are active for the purposes of section 2 of that Act) is amended as follows.
- (2) After paragraph 1 (the expressions “criminal proceedings” and “appellate proceedings”), there is inserted—
 - “1A Proceedings under sections (*Plea in bar of trial*) to (*Nullity of proceedings on previous indictment or complaint*) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 00) are criminal proceedings (and are not appellate proceedings) for the purposes of this Schedule.”.
- (3) In paragraph 4 (initial steps of criminal proceedings), at the end there is added—
 - “(f) the making of an application under section (*Tainted acquittals*)(3)(a)(ii) or (b) (tainted acquittals), (*Admission subsequent to acquittal*)(3) (admission subsequent to acquittal) or (*New evidence*)(2)(b) (new evidence) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 00).”.
- (4) In paragraph 5 (conclusion of criminal proceedings), at the end there is added—
 - “(d) where the initial steps of the proceedings are as mentioned in paragraph 4(f)—
 - (i) by refusal of the application,
 - (ii) if the application is granted and within 2 months thereafter a new prosecution is brought, by acquittal, or as the case may be by sentence, in the new prosecution.”.
- (5) In paragraph 7 (discontinuance of proceedings), at the end there is added—
 - “(d) where the initial steps of the proceedings are as mentioned in paragraph 4(f) and the application is granted, if no new prosecution is brought within 2 months thereafter.”.>

Bill Aitken

185 In section 143, page 138, line 32, at end insert—

<() an order under section (*New evidence*)(10),>

Children – age of criminal responsibility and minimum age of prosecution

Robert Brown

379 In section 38, page 53, line 15, leave out subsection (2) and insert—

<(2) In section 41 (age of criminal responsibility), for “eight” substitute “12”.>

THIS IS NOT THE MARSHALLED LIST

Bill Aitken

126 In section 38, page 53, line 17, after <not> insert <normally>

Bill Aitken

127 In section 38, page 53, line 18, after <not> insert <normally>

Richard Baker

389* In section 38, page 53, line 26, at end insert—

- <(5) The Scottish Ministers must, as soon as possible after the end of each of the reporting years, lay before the Scottish Parliament and publish a report on the disposal of cases (“relevant cases”) involving children who, but for section 41A of the 1995 Act (as inserted by subsection (2)), would have been prosecuted.
- (6) For the purposes of subsection (5), the “reporting years” are—
 - (a) the period of 12 months beginning with the day on which this section comes into force, and
 - (b) the periods of 12 months beginning with the first and second anniversaries of that day.
- (7) A report under subsection (5) must, in particular—
 - (a) specify the number of relevant cases disposed of during the reporting year,
 - (b) set out how those cases were disposed of and the costs and other resources involved in those disposals, and
 - (c) state what (if any) consideration the Scottish Ministers have given during the year covered by the report to the merits of altering the range of disposals available in such cases.>

Robert Brown

549 In section 143, page 138, line 35, at end insert <or

() an order under section 148(1) bringing into force section 38(1), (2), (3) or (4),>

Offences – liability of partners

Kenny MacAskill

128 In section 39, page 53, line 32, after <offence> insert <committed by the partnership>

Kenny MacAskill

129 In section 39, page 54, line 9, at end insert—

- <() In subsection (1), the references to a partner of a partnership include references to a person purporting to act as a partner of the partnership.>

THIS IS NOT THE MARSHALLED LIST

Witness statements

Kenny MacAskill

- 130** In section 40, page 54, line 23, leave out <all reasonable hours> and insert <a reasonable time and in a reasonable place>

Bill Aitken

Supported by: Robert Brown

- 131** Leave out section 40

Victims' representation at Parole Board hearings

Margaret Curran

- 403** After section 40, insert—

<Parole: victims' representation

Victims' representation at Parole Board hearings

- (1) Section 17 of the Criminal Justice (Scotland) Act 2003 (asp 7) is amended as follows.
- (2) After subsection (1), insert—
 - “(1A) Representations under subsection (1) may include a request by the victim to be heard (either in person or through a representative) at the relevant hearing of the Parole Board for Scotland.
 - (1B) In this section, the “relevant hearing” of the Board is the hearing at which the Board is to consider the convicted person’s case in order to decide whether to recommend, or direct, that person’s release on licence.”.
- (3) In subsection (3), for “Parole Board for Scotland” substitute “Board”.
- (4) After subsection (5), insert—
 - “(5A) Where representations are made under subsection (1) which include a request to be heard at the relevant hearing, the Board must—
 - (a) give the victim reasonable notice in writing of when and where the hearing is to take place and invite the victim to—
 - (i) attend the hearing, with or without an accompanying person, in order to be heard in person; or
 - (ii) send a representative to the hearing to be heard on the victim’s behalf;
 - (b) in so doing, give the victim appropriate information about the hearing and how it is likely to be conducted including, in particular—
 - (i) information about any parts of the hearing from which the victim and any accompanying person are, or the victim’s representative is, to be excluded, and
 - (ii) any limits on their participation during the other parts of the hearing;

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- (c) at the hearing, afford the victim (or the victim’s representative) a reasonable opportunity to be heard.
- (5B) A victim’s representative may only be a member of the victim’s immediate family or a friend of the victim.
- (5C) In reaching its decision at or after the hearing, the Board must take account of—
 - (a) any written representations made under subsection (1); and
 - (b) anything said by the victim (or the victim’s representative) at the hearing.”.>

Convictions in other UK or EU jurisdictions

Kenny MacAskill

518 In section 41, page 55, line 22, at end insert—

- <(4A) The reference in subsection (4)(c) to any previous conviction of an offence under subsection (1)(b) includes any previous conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to an offence under subsection (1)(b).
- (4B) The references in subsection (4)(d) to subsection (4) are to be read, in relation to a previous conviction by a court referred to in subsection (4A), as references to any provision that is equivalent to subsection (4).
- (4C) Any issue of equivalence arising in pursuance of subsection (4A) or (4B) is for the court to determine.>

Kenny MacAskill

519 In section 52, page 64, line 11, at end insert—

- <() A reference in this section to a conviction which occurred on or after the date of offence O is a reference to such a conviction by a court in any part of the United Kingdom or in any other member State of the European Union.”.>

Kenny MacAskill

520 In section 52, page 64, line 36, at end insert—

- <() A reference in this section to a conviction which occurred on or after the date of offence O is a reference to such a conviction by a court in any part of the United Kingdom or in any other member State of the European Union.”.>

Kenny MacAskill

521 After section 52, insert—

<Convictions by courts in other EU member States

- (1) Schedule (*Convictions by courts in other EU member States*) makes modifications of the 1995 Act and other enactments for the purposes of and in connection with implementing obligations of the United Kingdom created by or arising under the Framework Decision (so far as they have effect in or as regards Scotland).

THIS IS NOT THE MARSHALLED LIST

- (2) The Scottish Ministers may by order make further provision for the purposes of and in connection with implementing those obligations.
- (3) The provision may, in particular, confer functions—
 - (a) on the Scottish Ministers,
 - (b) on other persons.
- (4) An order under subsection (2) may modify any enactment.
- (5) In this section, the “Framework Decision” means Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.>

Kenny MacAskill

522 After schedule 2, insert—

<SCHEDULE

(introduced by section (Convictions by courts in other EU member States)(1))

CONVICTIONS BY COURTS IN OTHER EU MEMBER STATES: MODIFICATIONS OF ENACTMENTS

PART 1

THE 1995 ACT

The 1995 Act

- 1 The 1995 Act is amended as follows.
- 2 In section 23C(2)(d)(i) (previous convictions to be taken into consideration in determining bail), for “outwith Scotland” substitute “by courts outside the European Union”.
- 3 In section 27 (breach of bail conditions: offences), after subsection (3) insert—
 - “(3A) The reference in subsection (3)(b) to any previous conviction of an offence under subsection (1)(b) includes any previous conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to an offence under subsection (1)(b).
 - (3B) The references in subsection (3)(c) to subsection (3) are to be read, in relation to a previous conviction by a court referred to in subsection (3A), as references to any provision that is equivalent to subsection (3).
 - (3C) Any issue of equivalence arising in pursuance of subsection (3A) or (3B) is for the court to determine.”.
- 4 In section 202(2) (deferred sentence), for “Great Britain” substitute “the United Kingdom or in another member State of the European Union”.
- 5 In section 204 (restrictions on passing sentence of imprisonment or detention)—
 - (a) in each of subsections (1) and (2), after “United Kingdom” insert “or in another member State of the European Union”,
 - (b) after subsection (4) insert—
 - “(4A) The court shall, for the purpose of determining whether a person has been previously sentenced to imprisonment or detention by a court in a member State of the European Union other than the United Kingdom—

THIS IS NOT THE MARSHALLED LIST

- (a) disregard any previous sentence of imprisonment which, being the equivalent of a suspended sentence, has not taken effect;
 - (b) construe detention as meaning an equivalent sentence to any of those mentioned in subsection (4)(b).
- (4B) Any issue of equivalence arising in pursuance of subsection (4A) is for the court to determine.”.
- 6 In section 205B (minimum sentence for third conviction of certain offences relating to drug trafficking)—
 - (a) in subsection (1)(b), for “been convicted in any part of the United Kingdom of two other class A drug trafficking offences” substitute “two previous convictions for relevant offences”,
 - (b) after subsection (1) insert—
 - “(1A) In subsection (1), “relevant offence” means—
 - (a) in relation to a conviction by a court in any part of the United Kingdom, a class A drug trafficking offence;
 - (b) in relation to a conviction by a court in a member State of the European Union other than the United Kingdom, an offence that is equivalent to a class A drug trafficking offence.
 - (1B) Any issue of equivalence arising in pursuance of subsection (1A)(b) is for the court to determine.”.
- 7 In section 275A (disclosure of accused’s previous convictions where court allows questioning or evidence under section 275)—
 - (a) in subsection (10)—
 - (i) the word “or” immediately following paragraph (a) is repealed,
 - (ii) after paragraph (a) insert—
 - “(aa) a conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to one to which section 288C of this Act applies by virtue of subsection (2) thereof; or”,
 - (b) after subsection (10) insert—
 - “(10A) Any issue of equivalence arising in pursuance of subsection (10)(aa) is for the court to determine.”.
- 8 In section 307 (interpretation)—
 - (a) in subsection (1), insert the following definition at the appropriate place—
 - ““conviction”, in relation to a previous conviction by a court outside Scotland, means a final decision of a criminal court establishing guilt of a criminal offence;”, and
 - (b) for subsection (5) substitute—
 - “(5) Except where the context requires otherwise—
 - (a) any reference in this Act to a previous conviction is to be construed as a reference to a previous conviction by a court in any part of the United Kingdom or in any other member State of the European Union;

THIS IS NOT THE MARSHALLED LIST

- (b) any reference in this Act to a previous sentence is to be construed as a reference to a previous sentence passed by any such court;
- (c) any reference to a previous conviction of a particular offence is to be construed, in relation to a previous conviction by a court outside Scotland, as a reference to a previous conviction of an equivalent offence; and
- (d) any reference to a previous sentence of a particular kind is to be construed, in relation to a previous sentence passed by a court outside Scotland, as a reference to a previous sentence of an equivalent kind.”.

PART 2

OTHER ENACTMENTS

The Civic Government (Scotland) Act 1982 (c.45)

- 9 In section 58 of the Civic Government (Scotland) Act 1982, after subsection (4) insert—
- “(4A) In subsection (4), the reference to a conviction for theft includes a reference to a conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to theft.
 - (4B) Any issue of equivalence arising in pursuance of subsection (4A) is for the court to determine.”.

The Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9)

- 10 In section 27(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (interpretation of Part 1), insert at the appropriate place—
- ““previous conviction” means a previous conviction by a court in any part of the United Kingdom or in any other member State of the European Union;”.

The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)

- 11 (1) Section 9 of the Criminal Law (Consolidation) (Scotland) Act 1995 (permitting girl to use premises for intercourse) is amended as follows.
- (2) In subsection (2A)—
 - (a) the word “or” immediately following paragraph (a) is repealed, and
 - (b) after paragraph (a) insert—
 - “(aa) that person has a previous conviction for a relevant foreign offence committed against a person under the age of 16; or”.
 - (3) In subsection (3)—
 - (a) the word “and” immediately following paragraph (a) is repealed, and
 - (b) after paragraph (a) insert—
 - “(aa) “a previous conviction for a relevant foreign offence” has the same meaning as in section 39(5)(aa) of that Act; and”.

THIS IS NOT THE MARSHALLED LIST

The Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17)

12 In section 4(1) of the Custodial Sentences and Weapons (Scotland) Act 2007 (basic definitions for purposes of Part 2), insert at the appropriate place—

““previous conviction” means a previous conviction by a court in any part of the United Kingdom or in any other member State of the European Union,”.

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

13 (1) Section 39 of the Sexual Offences (Scotland) Act 2009 (defences in relation to offences against older children) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (a)—

- (i) the word “or” immediately following sub-paragraph (i) is repealed, and
- (ii) after sub-paragraph (i) insert—

“(ia) if A has a previous conviction for a relevant foreign offence committed against a person under the age of 16, or”,

(b) in paragraph (b)—

- (i) the word “or” immediately following sub-paragraph (i) is repealed, and
- (ii) after sub-paragraph (i) insert—

“(ia) if B has a previous conviction for a relevant foreign offence committed against a person under the age of 16, or”.

(3) In subsection (5), after paragraph (a) insert—

“(aa) “a previous conviction for a relevant foreign offence” means a previous conviction by a court in a member State of the European Union other than the United Kingdom for an offence that is equivalent to one listed in paragraph 1, 4, 7, 10, 13 (so far as applying to an offence listed in paragraph 1, 4, 7 or 10) or 14 of schedule 1,”

(4) After subsection (5) insert—

“(5A) Any issue of equivalence arising in pursuance of subsection (5)(aa) is for the court to determine.

(5B) For that purpose, an offence may be equivalent to one listed in paragraph 1, 4, 7, 10, 13 (so far as applying to an offence listed in paragraph 1, 4, 7 or 10) or 14 of schedule 1 even though, under the law of the member State (or part of the member State) in question, it is an offence—

- (a) regardless of the age of the victim, or
- (b) only if committed against a person under an age other than 16 years.”.>

Kenny MacAskill

540 In section 143, page 138, line 32, at end insert—

<() an order under section (*Convictions by courts in other EU member States*)(2),>

THIS IS NOT THE MARSHALLED LIST

Power of sheriff or JP to grant warrants to police based outside sheriffdom

Kenny MacAskill

420 After section 41, insert—

<Grant of warrants

Grant of warrants for execution by constables and police members of SCDEA

- (1) A sheriff or justice of the peace does not lack power or jurisdiction to grant a warrant for execution by a person mentioned in subsection (2) solely because the person is not a constable of a police force for a police area lying wholly or partly in the sheriff's or justice's sheriffdom.
- (2) The persons referred to in subsection (1) are—
 - (a) a constable,
 - (b) a police member of the Scottish Crime and Drug Enforcement Agency.>

Bail conditions – remote monitoring requirements

Kenny MacAskill

132 After section 43, insert—

<Bail conditions: remote monitoring requirements

Sections 24A to 24E of the 1995 Act (bail conditions: remote monitoring) are repealed.>

Kenny MacAskill

197 In schedule 5, page 158, line 36, at end insert <and

- (ii) sub-paragraph (b) is repealed.>

Prosecution on indictment – Scottish Law Officers

Kenny MacAskill

421 In section 44, page 58, line 5, at end insert—

- <() The title of section 287 becomes “Demission from office of Lord Advocate and Solicitor General for Scotland”.>

Kenny MacAskill

422 In section 44, page 58, line 6, leave out from <subsection> to <Advocate)> and insert <that section>

Kenny MacAskill

423 In section 44, page 58, line 11, at end insert <and

- () after “successor” insert “or the Solicitor General”,>

THIS IS NOT THE MARSHALLED LIST

Kenny MacAskill

424 In section 44, page 58, leave out line 13 and insert—

<() for “in name of” substitute “at the instance of Her Majesty’s Advocate or”,
and>

Kenny MacAskill

425 In section 44, page 58, line 17, at end insert—

<(2AA) All indictments which have been raised at the instance of the Solicitor General shall remain effective notwithstanding the holder of the office of Solicitor General subsequently having died or demitted office and may be taken up and proceeded with by his successor or the Lord Advocate.>

Kenny MacAskill

426 In section 44, page 58, line 19, leave out from <as> to end of line 20

Kenny MacAskill

427 In section 44, page 58, line 24, at end insert—

<() in paragraph (a), after “subsection (1)” insert “or (2AA)”,>

Kenny MacAskill

451 In schedule 5, page 152, line 10, at end insert—

<*The Law Officers Act 1944 (c.25)*

In section 2(3) of the Law Officers Act 1944 (Lord Advocate and Solicitor General for Scotland), for the words from “three” to the end substitute “287 of the Criminal Procedure (Scotland) Act 1995 (c.46)”.>

Dockets and charges in sex cases

Kenny MacAskill

428 After section 46, insert—

<Dockets and charges in sex cases

Dockets and charges in sex cases

After section 288B of the 1995 Act insert—

“Dockets and charges in sex cases

288BA Dockets for charges of sexual offences

- (1) An indictment or a complaint may include a docket which specifies any act or omission that is connected with a sexual offence charged in the indictment or complaint.
- (2) Here, an act or omission is connected with such an offence charged if it—
 - (a) is specifiable by way of reference to a sexual offence, and
 - (b) relates to—

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- (i) the same event as the offence charged, or
 - (ii) a series of events of which that offence is also part.
- (3) The docket is to be in the form of a note apart from the offence charged.
- (4) It does not matter whether the act or omission, if it were instead charged as an offence, could not competently be dealt with by the court (including as particularly constituted) in which the indictment or complaint is proceeding.
- (5) Where under subsection (1) a docket is included in an indictment or a complaint, it is to be presumed that—
 - (a) the accused person has been given fair notice of the prosecutor’s intention to lead evidence of the act or omission specified in the docket, and
 - (b) evidence of the act or omission is admissible as relevant.
- (6) The references in this section to a sexual offence are to—
 - (a) an offence under the Sexual Offences (Scotland) Act 2009,
 - (b) any other offence involving a significant sexual element.

288BB Mixed charges for sexual offences

- (1) An indictment or a complaint may include a charge that is framed as mentioned in subsection (2) or (3) (or both).
- (2) That is, framed so as to comprise (in a combined form) the specification of more than one sexual offence.
- (3) That is, framed so as to—
 - (a) specify, in addition to a sexual offence, any other act or omission, and
 - (b) do so in any manner except by way of reference to a statutory offence.
- (4) Where a charge in an indictment or a complaint is framed as mentioned in subsection (2) or (3) (or both), the charge is to be regarded as being a single yet cumulative charge.
- (5) The references in this section to a sexual offence are to an offence under the Sexual Offences (Scotland) Act 2009.”.>

Remand and committal of children and young persons

Robert Brown

541 In section 47, page 61, line 2, at end insert—

- <(A1) Section 44 of the 1995 Act (detention of children) is amended in accordance with subsections (B1) and (C1).
- (B1) In subsection (1), after “child” insert “aged 16 years or over”.
- (C1) In subsection (2), the words from “(other than” to “this Act)” are repealed.>

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Prohibition of personal conduct of case by accused

Kenny MacAskill

429 After section 51, insert—

<Personal conduct of case by accused

Prohibition of personal conduct of case by accused in certain proceedings

- (1) The 1995 Act is amended as follows.
- (2) In section 288C (prohibition of personal conduct of defence in cases of certain sexual offences)—
 - (a) for subsection (1) substitute—

“(1) An accused charged with a sexual offence to which this section applies is prohibited from conducting his case in person at, or for the purposes of, any relevant hearing in the course of proceedings (other than proceedings in a JP court) in respect of the offence.

(1A) In subsection (1), “relevant hearing” means a hearing at, or for the purposes of, which a witness is to give evidence.”, and
 - (b) subsection (8) is repealed.
- (3) In section 288D (appointment of solicitor by court in cases to which section 288C applies)—
 - (a) in subsection (1), after “proceedings” insert “(other than proceedings in a JP court)”,
 - (b) in subsection (2)(a), for sub-paragraphs (i) and (ii) substitute—

“(i) the conduct of his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the proceedings; or”, and
 - (c) in subsection (6), for the words from “of the accused’s defence” to the end substitute “referred to in subsection (2)(a) above.”.
- (4) In section 288E (prohibition of personal conduct of defence in certain cases involving child witness under the age of 12)—
 - (a) subsection (1) is repealed,
 - (b) in subsection (2)(b), for “the trial” substitute “any hearing in the course of the proceedings”,
 - (c) after subsection (2) insert—

“(2A) The accused is prohibited from conducting his case in person at, or for the purposes of, any hearing at, or for the purposes of, which the child witness is to give evidence.”,
 - (d) in subsection (4), at the end insert “and as if references to a relevant hearing were references to a hearing referred to in subsection (2A) above”,
 - (e) in subsection (6)—
 - (i) for paragraphs (za) and (a) substitute—

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<In section 66 (service and lodging of indictment etc.), in subsection (6A)(a)—

- (a) for sub-paragraphs (zi) and (i) substitute—
 - “(i) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings (including at any commissioner proceedings) may be conducted only by a lawyer,”, and
- (b) in sub-paragraph (iii), for the words from “preliminary” to “trial” substitute “hearing”.

In section 71 (first diet)—

- (a) in subsection (A1), for the words “his defence at the trial” substitute “the conduct of his case at any relevant hearing in the course of the proceedings”,
- (b) in subsection (B1)(c), for the words “before the trial diet” substitute “in relation to any hearing in the course of the proceedings”,
- (c) in subsection (1A)(a), for “the trial” substitute “any hearing in the course of the proceedings”,
- (d) in subsection (1B)(a), for “the trial” substitute “any hearing in the course of the proceedings”,
- (e) in subsection (5A)(b), for the words “his defence at the trial” substitute “the conduct of his case at any relevant hearing in the course of the proceedings”, and
- (f) after subsection (7), insert—

“(7A) In subsections (A1) and (5A)(b), “relevant hearing” means—

- (a) in relation to proceedings mentioned in paragraph (a) of subsection (B1), any hearing at, or for the purposes of, which a witness is to give evidence,
- (b) in relation to proceedings mentioned in paragraph (b) of that subsection, a hearing referred to in section 288E(2A),
- (c) in relation to proceedings mentioned in paragraph (c) of that subsection, a hearing in respect of which an order is made under section 288F.”.>

Kenny MacAskill

458 In schedule 5, page 155, line 23, at end insert—

<In section 140 (citation), in subsection (2A)—

- (a) for paragraph (a) substitute—
 - “(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings (including at any commissioner proceedings) may be conducted only by a lawyer,”, and
- (b) in paragraph (c), for the words “his defence at the trial” substitute “the conduct of his case at, or for the purposes of, the hearing”.

In section 144 (procedure at first diet), in subsection (3A)—

- (a) for paragraph (a) substitute—

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“(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings may be conducted only by a lawyer,”, and

(b) in paragraph (c), for the words “his defence at the trial” substitute “the conduct of his case at, or for the purposes of, the hearing”.

In section 146 (plea of not guilty), in subsection (3A)—

(a) for paragraph (a) substitute—

“(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings may be conducted only by a lawyer,”, and

(b) in paragraph (c), for the words “his defence at the trial” substitute “the conduct of his case at, or for the purposes of, the hearing”.>

Kenny MacAskill

459 In schedule 5, page 157, line 36, at end insert—

<*The Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5)*

In the Criminal Procedure (Amendment) (Scotland) Act 2004 the following provisions are repealed—

(a) in section 4 (prohibition on accused conducting case in person in certain cases), subsection (4),

(b) section 17 (bail conditions: remote monitoring of restrictions on movements), and

(c) in the schedule (further modifications of the 1995 Act), paragraph 55.>

Crown appeals

Kenny MacAskill

462 In section 54, page 65, line 30, leave out <the close of the whole of the evidence> and insert <one or other (but not both) of the appropriate events>

Kenny MacAskill

463 In section 54, page 65, leave out lines 39 and 40 and insert—

<() For the purposes of subsection (1), “the appropriate events” are—

(a) the close of the whole of the evidence,

(b) the conclusion of the prosecutor’s address to the jury on the evidence.>

Kenny MacAskill

464 In section 54, page 66, line 15, leave out <the prosecutor to amend the indictment> and insert <that the indictment be amended>

Kenny MacAskill

465 In section 54, page 66, line 22, after first <of> insert <the judge or>

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Kenny MacAskill

- 466 In section 54, page 66, line 29, leave out <the prosecutor to amend the indictment> and insert <that the indictment be amended>

Kenny MacAskill

- 467 In section 54, page 66, line 37, after first <of> insert <the judge or>

Kenny MacAskill

- 468 In section 54, page 66, line 37, at end insert—

<97D No acquittal on “no reasonable jury” grounds

- (1) A judge has no power to direct the jury to return a not guilty verdict on any charge on the ground that no reasonable jury, properly directed on the evidence, could convict on the charge.
- (2) Accordingly, no submission based on that ground or any ground of like effect is to be allowed.>

Kenny MacAskill

- 469 In section 55, page 67, line 4, at end insert—

- <(1A) If, immediately after an acquittal under section 97 or 97B(2)(a), the prosecutor moves for the trial diet to be adjourned for no more than 2 days in order to consider whether to appeal against the acquittal under subsection (1), the court of first instance must grant the motion unless the court considers that there are no arguable grounds of appeal.
- (1B) If, immediately after the giving of a direction under section 97B(2)(b) or 97C(2), the prosecutor moves for the trial diet to be adjourned for no more than 2 days in order to consider whether to appeal against the direction under subsection (1), the court of first instance must grant the motion unless the court considers that it would not be in the interests of justice to do so.
- (1C) In considering whether it would be in the interests of justice to grant a motion for adjournment under subsection (1B), the court must have regard, amongst other things, to—
 - (a) whether, if an appeal were to be made and to be successful, continuing with the diet would have any impact on any subsequent or continued prosecution,
 - (b) whether there are any arguable grounds of appeal.
- (1D) An appeal may not be brought under subsection (1) unless the prosecutor intimates intention to appeal—
 - (a) immediately after the acquittal or, as the case may be, the giving of the direction,
 - (b) if a motion to adjourn the trial diet under subsection (1A) or (1B) is granted, immediately upon resumption of the diet, or
 - (c) if such a motion is refused, immediately after the refusal.
- (1E) Subsection (2) applies if—
 - (a) the prosecutor intimates an intention to appeal under subsection (1)(a), or

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(b) the trial diet is adjourned under subsection (1A).>

Kenny MacAskill

470 In section 55, page 67, line 5, leave out from beginning to <Court> and insert <Where this subsection applies, the court of first instance must suspend the effect of the acquittal and>

Kenny MacAskill

471 In section 55, page 67, line 10, leave out <exceptionally and>

Kenny MacAskill

472 In section 55, page 67, line 11, at end insert—

<() The court may, under subsection (2)(b), order the detention of the person in custody only if the court considers that there are arguable grounds of appeal.>

Kenny MacAskill

473 In section 55, page 67, leave out lines 25 to 33

Kenny MacAskill

474 In section 55, page 68, line 5, leave out <an appeal is brought> and insert <the prosecutor intimates intention to appeal>

Kenny MacAskill

475 In section 55, page 68, line 28, leave out <or 107B>

Kenny MacAskill

476 In section 55, page 69, line 13, at end insert—

<() However, if the prosecutor moves for the diet to be deserted *pro loco et tempore* in relation to such other offence, the court must grant the motion.>

Kenny MacAskill

477 In section 57, page 69, line 26, leave out <within 7 days after an appeal is brought under section 107A(1)> and insert <where the prosecutor intimates intention to appeal under section 107A(1), within 7 days after the acquittal or direction appealed against>

Kenny MacAskill

514 In schedule 5, page 154, line 5, at end insert—

<In section 23A (bail and liberation where person already in custody)—

(a) in each of subsections (1) and (4), for “23 or 65(8C)” substitute “23, 65(8C) or 107A(2)(b)”, and

(b) in subsection (3), for “22A(3) or 23(7)” substitute “22A(3), 23(7) or 107A(2)(b)”.>

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Retention of samples etc. – adults

Kenny MacAskill

- 478** In section 58, page 71, line 4, leave out from <18(7A)> to end of line 5 and insert <18 (prints, samples etc. in criminal investigations)—
- () in subsection (3), for “section 18A” substitute “sections 18A to 18C”,
 - () in subsection (7A), for “sections 19 to 20” substitute “, subject to the modification in subsection (7AA), sections 18A to 19C”, and
 - () after subsection (7A) insert—
“(7AA)The modification is that for the purposes of section 19C as it applies in relation to relevant physical data taken from or provided by a person outwith Scotland, subsection (7A) is to be read as if in paragraph (d) the words from “created” to the end were omitted.”.>

James Kelly

- 404** In section 58, page 71, line 4, leave out from <18(7A)> to <Act),> in line 5 and insert <18 (prints, samples etc. in criminal investigations)—
- () in subsection (3), the words “or on the conclusion of such proceedings otherwise than with a conviction or an order under section 246(3) of this Act” are repealed, and
 - () in subsection (7A),>

James Kelly

- 405** In section 58, page 71, leave out line 6 and insert—
- <() The title of section 18A becomes “Retention of samples, etc.: persons prosecuted but not convicted etc.”, and in that section>

Kenny MacAskill

- 479** In section 58, page 71, leave out lines 7 to 10 and insert—
- <() for subsection (1) substitute—
- “(1) This section applies to—
- (a) relevant physical data taken or provided under section 18(2), and
 - (b) any sample, or any information derived from a sample, taken under section 18(6) or (6A),
- where the condition in subsection (2) is satisfied.”.>

James Kelly

- 406** In section 58, page 71, line 11, after <(2)> insert—
- <() the words “in respect of a relevant sexual offence or a relevant violent offence” are repealed, and
- ()>

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Kenny MacAskill

- 480** In section 58, page 71, line 13, leave out from <after> to <data,”> and insert <for “sample or information” substitute “relevant physical data, sample or information derived from a sample”,>

James Kelly

- 407** In section 58, page 71, line 13, at end insert—
<() in subsection (4)(a), for “3” substitute “6”,>

Kenny MacAskill

- 481** In section 58, page 71, line 14, leave out from beginning to <data,”> in line 15 and insert—
<() after subsection (8) insert—
“(8A) If the sheriff principal allows an appeal against the refusal of an application under subsection (5), the sheriff principal may make an order amending, or further amending, the destruction date.
(8B) An order under subsection (8A) must not specify a destruction date more than 2 years later than the previous destruction date.”,
() in subsection (10), for “sample or information” substitute “relevant physical data, sample or information derived from a sample”>

Kenny MacAskill

- 482** In section 58, page 71, line 18, at end insert <and
() in the definition of “relevant sexual offence” and “relevant violent offence”, after “have” insert “, subject to the modification in subsection (12),”, and
() after subsection (11) insert—
“(12) The modification is that the definition of “relevant sexual offence” in section 19A(6) is to be read as if for paragraph (g) there were substituted—
“(g) public indecency if it is apparent from the offence as charged in the indictment or complaint that there was a sexual aspect to the behaviour of the person charged;”.>

James Kelly

- 408** In section 58, page 71, line 18, at end insert <, and
() the definition of “relevant sexual offence” and “relevant violent offence” is repealed.>

Kenny MacAskill

- 494** After section 59, insert—
<Extension of section 19A of 1995 Act
In section 19A(6) of the 1995 Act (definitions of certain expressions for purposes of section 19A)—
(a) in the definition of “relevant sexual offence”, for paragraph (g) substitute—

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“(g) public indecency if the court, in imposing sentence or otherwise disposing of the case, determined for the purposes of paragraph 60 of Schedule 3 to the Sexual Offences Act 2003 (c.42) that there was a significant sexual aspect to the offender’s behaviour in committing the offence;”, and

(b) in paragraph (h) of the definition of “relevant violent offence”, after subparagraph (iv), insert—

“(v) section 47(1) (possession of offensive weapon in public place), 49(1) (possession of article with blade or point in public place), 49A(1) or (2) (possession of article with blade or point or offensive weapon on school premises) or 49C(1) (possession of offensive weapon or article with blade or point in prison) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39);”.>

Kenny MacAskill

499 In section 60, page 74, line 18, at end insert <and

() relevant physical data, a sample or information derived from a sample taken from, or provided by, a person outwith Scotland which is given by any person to—

(i) a police force,

(ii) the Scottish Police Services Authority, or

(iii) a person acting on behalf of a police force.>

Kenny MacAskill

502 In section 60, page 74, line 23, at end insert—

<(2A) Subsections (2B) and (2C) apply to relevant physical data, a sample or information derived from a sample falling within any of paragraphs (a) to (d) of subsection (1) (“relevant material”).

(2B) If the relevant material is held by a police force, the Scottish Police Services Authority or a person acting on behalf of a police force, the police force or, as the case may be, the Authority or person may give the relevant material to another person for use by that person in accordance with subsection (2).

(2C) A police force, the Scottish Police Services Authority or a person acting on behalf of a police force may, in using the relevant material in accordance with subsection (2), check it against other relevant physical data, samples and information derived from samples received from another person.>

Kenny MacAskill

503 In section 60, page 74, line 33, leave out <the United Kingdom> and insert <Scotland>

Kenny MacAskill

504 In section 60, page 74, line 35, leave out <the United Kingdom> and insert <Scotland>

Kenny MacAskill

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

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<In section 18(8)(c) (power to take prints etc. under authority of a warrant unaffected by section), for “prints, impressions” substitute “relevant physical data”.

In section 19(1)(b) (samples etc. taken from person convicted of offence), the words “impression or”, in both places where they occur, are repealed.>

Kenny MacAskill

513 In schedule 5, page 154, line 4, at end insert—

<Section 20 (use of prints, samples etc.) is repealed.>

Retention of samples etc. – alternatives to prosecution

Stewart Maxwell

418 After section 58, insert—

<Retention of samples etc. where offer under sections 302 to 303ZA accepted

After section 18A of the 1995 Act insert—

“18AA Retention of samples etc. where offer under sections 302 to 303ZA accepted

- (1) This section applies to—
 - (a) relevant physical data taken from or provided by a person under section 18(2), and
 - (b) any sample, or any information derived from a sample, taken from a person under section 18(6) or (6A),
where the conditions in subsection (2) are satisfied.
- (2) The conditions are—
 - (a) the relevant physical data or sample was taken from or provided by the person while the person was under arrest or being detained in connection with the offence or offences in relation to which a relevant offer is issued to the person, and
 - (b) the person—
 - (i) accepts a relevant offer, or
 - (ii) in the case of a relevant offer other than one of the type mentioned in paragraph (d) of subsection (3), is deemed to accept a relevant offer.
- (3) In this section “relevant offer” means—
 - (a) a conditional offer under section 302,
 - (b) a compensation offer under section 302A,
 - (c) a combined offer under section 302B, or
 - (d) a work offer under section 303ZA.

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- (4) Subject to subsections (6) and (7) and section 18AB(9) and (10), the relevant physical data, sample or information derived from a sample must be destroyed no later than the destruction date.
- (5) In subsection (4), “destruction date” means—
 - (a) in relation to a relevant offer that relates only to—
 - (i) a relevant sexual offence,
 - (ii) a relevant violent offence, or
 - (iii) both a relevant sexual offence and a relevant violent offence,the date of expiry of the period of 3 years beginning with the date on which the relevant offer is issued or such later date as an order under section 18AB(2) or (6) may specify,
 - (b) in relation to a relevant offer that relates to—
 - (i) an offence or offences falling within paragraph (a), and
 - (ii) any other offence,the date of expiry of the period of 3 years beginning with the date on which the relevant offer is issued or such later date as an order under section 18AB(2) or (6) may specify,
 - (c) in relation to a relevant offer that does not relate to an offence falling within paragraph (a), the date of expiry of the period of 2 years beginning with the date on which the relevant offer is issued.
- (6) If a relevant offer is recalled by virtue of section 302C(5) or a decision to uphold it is quashed under section 302C(7)(a), all record of the relevant physical data, sample and information derived from a sample must be destroyed as soon as possible after—
 - (a) the prosecutor decides not to issue a further relevant offer to the person,
 - (b) the prosecutor decides not to institute criminal proceedings against the person, or
 - (c) the prosecutor institutes criminal proceedings against the person and those proceedings conclude otherwise than with a conviction or an order under section 246(3).
- (7) If a relevant offer is set aside by virtue of section 303ZB, all record of the relevant physical data, sample and information derived from a sample must be destroyed as soon as possible after the setting aside.
- (8) In this section, “relevant sexual offence” and “relevant violent offence” have, subject to the modification in subsection (9), the same meanings as in section 19A(6) and include any attempt, conspiracy or incitement to commit such an offence.
- (9) The modification is that the definition of “relevant sexual offence” in section 19A(6) is to be read as if for paragraph (g) there were substituted—
 - “(g) public indecency if it is apparent from the relevant offer (as defined in section 18AA(3)) relating to the offence that there was a sexual aspect to the behaviour of the person to whom the relevant offer is issued;”.

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18AB Section 18AA: extension of retention period where relevant offer relates to certain sexual or violent offences

- (1) This section applies where the destruction date for relevant physical data, a sample or information derived from a sample falls within section 18AA(5)(a) or (b).
- (2) On a summary application made by the relevant chief constable within the period of 3 months before the destruction date, the sheriff may, if satisfied that there are reasonable grounds for doing so, make an order amending, or further amending, the destruction date.
- (3) An application under subsection (2) may be made to any sheriff—
 - (a) in whose sheriffdom the appropriate person resides,
 - (b) in whose sheriffdom that person is believed by the applicant to be, or
 - (c) to whose sheriffdom the person is believed by the applicant to be intending to come.
- (4) An order under subsection (2) must not specify a destruction date more than 2 years later than the previous destruction date.
- (5) The decision of the sheriff on an application under subsection (2) may be appealed to the sheriff principal within 21 days of the decision.
- (6) If the sheriff principal allows an appeal against the refusal of an application under subsection (2), the sheriff principal may make an order amending, or further amending, the destruction date.
- (7) An order under subsection (6) must not specify a destruction date more than 2 years later than the previous destruction date.
- (8) The sheriff principal's decision on an appeal under subsection (5) is final.
- (9) Section 18AA(4) does not apply where—
 - (a) an application under subsection (2) has been made but has not been determined,
 - (b) the period within which an appeal may be brought under subsection (5) against a decision to refuse an application has not elapsed, or
 - (c) such an appeal has been brought but has not been withdrawn or finally determined.
- (10) Where—
 - (a) the period within which an appeal referred to in subsection (9)(b) may be brought has elapsed without such an appeal being brought,
 - (b) such an appeal is brought and is withdrawn or finally determined against the appellant, or
 - (c) an appeal brought under subsection (5) against a decision to grant an application is determined in favour of the appellant,the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the period has elapsed, or, as the case may be, the appeal is withdrawn or determined.
- (11) In this section—

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“appropriate person” means the person from whom the relevant physical data was taken or by whom it was provided or from whom the sample was taken,

“destruction date” has the meaning given by section 18AA(5),

“the relevant chief constable” has the same meaning as in subsection (11) of section 18A, with the modification that references to the person referred to in subsection (2) of that section are references to the appropriate person.”.>

Stewart Maxwell

419 After section 58, insert—

<Retention of samples etc. taken or provided in connection with certain fixed penalty offences

After section 18A of the 1995 Act insert—

“18AC Retention of samples etc. taken or provided in connection with certain fixed penalty offences

- (1) This section applies to—
 - (a) relevant physical data taken from or provided by a person under section 18(2), and
 - (b) any sample, or any information derived from a sample, taken from a person under section 18(6) or (6A),
where the conditions in subsection (2) are satisfied.
- (2) The conditions are—
 - (a) the person was arrested or detained in connection with a fixed penalty offence,
 - (b) the relevant physical data or sample was taken from or provided by the person while the person was under arrest or being detained in connection with that offence,
 - (c) after the relevant physical data or sample was taken from or provided by the person, a constable gave the person under section 129(1) of the 2004 Act—
 - (i) a fixed penalty notice in respect of that offence (the “main FPN”), or
 - (ii) the main FPN and one or more other fixed penalty notices in respect of fixed penalty offences arising out of the same circumstances as the offence to which the main FPN relates, and
 - (d) the person, in relation to the main FPN and any other fixed penalty notice of the type mentioned in paragraph (c)(ii)—
 - (i) pays the fixed penalty, or
 - (ii) pays any sum that the person is liable to pay by virtue of section 131(5) of the 2004 Act.

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- (3) Subject to subsections (4) and (5), the relevant physical data, sample or information derived from a sample must be destroyed before the end of the period of 2 years beginning with—
- (a) where subsection (2)(c)(i) applies, the day on which the main FPN is given to the person,
 - (b) where subsection (2)(c)(ii) applies and—
 - (i) the main FPN and any other fixed penalty notice are given to the person on the same day, that day,
 - (ii) the main FPN and any other fixed penalty notice are given to the person on different days, the later day.
- (4) Where—
- (a) subsection (2)(c)(i) applies, and
 - (b) the main FPN is revoked under section 133(1) of the 2004 Act,
- the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the revocation.
- (5) Where—
- (a) subsection (2)(c)(ii) applies, and
 - (b) the main FPN and any other fixed penalty notices are revoked under section 133(1) of the 2004 Act,
- the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the revocations.
- (6) In this section—
- “the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),
 - “fixed penalty notice” has the meaning given by section 129(2) of the 2004 Act,
 - “fixed penalty offence” has the meaning given by section 128(1) of the 2004 Act.”.>

Retention of samples etc. – children referred to children’s hearings

James Kelly

- 409** In section 59, page 72, line 19, leave out from <such> to second <offence> and insert—
- <() an offence of assault, categorised by the Principal Reporter as grave, or
 - () such—
 - (i) other relevant violent offence, or
 - (ii) relevant sexual offence,>

James Kelly

- 410** In section 59, page 72, leave out lines 21 to 36

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Robert Brown

- 380 In section 59, page 72, leave out lines 21 and 22, and insert—
- <(7) Where this section applies, the sheriff may, on summary application by the relevant chief constable, make an order that, subject to section 18C(6) and (7), the relevant physical data, sample or the information must be destroyed no later than the destruction date.
 - (7A) The sheriff may only make the order referred to in subsection (7) if satisfied that the child continues to pose a risk to public safety and that retention of the relevant physical data, sample or information until the destruction date is justified by that risk.>

Kenny MacAskill

- 483 In section 59, page 72, line 21, leave out <18C(5) and (6)> and insert <18C(6) and (7)>

Kenny MacAskill

- 484 In section 59, page 72, line 21, leave out <the information> and insert <information derived from a sample>

Robert Brown

- 545 In section 59, page 72, leave out lines 25 to 36 and insert <the date on which the relevant offence mentioned in subsection (3), (4) or, as the case may be, (5) was committed; or
- (b) such later date as an order under section 18C(1) may specify.
 - () For the purposes of subsection (8)(a)—
 - (a) if two or more relevant offences were committed on different dates, it is the most recent of those offences that is to be taken as the offence constituting the ground of referral; and
 - (b) if a relevant offence was committed on more than one date, the date on which the offence was committed is to be taken as the most recent of those dates.>

Robert Brown

- 381 In section 59, page 72, line 40, at end insert—
- <“relevant chief constable” has the same meaning as in section 18A(11), with the modification that references to the person referred to in subsection (2) of that section are references to the child referred to in subsection (1);>

Kenny MacAskill

- 485 In section 59, page 73, line 1, after <have> insert <, subject to the modification in subsection (11),>

Kenny MacAskill

- 486 In section 59, page 73, line 3, at end insert—
- <(11) The modification is that the definition of “relevant sexual offence” in section 19A(6) is to be read as if for paragraph (g) there were substituted—

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“(g) public indecency if it is apparent from the ground of referral relating to the offence that there was a sexual aspect to the behaviour of the child;”.>

James Kelly

411 In section 59, page 73, leave out lines 4 to 40

Robert Brown

546 In section 59, page 73, line 7, leave out from <there> to end of line 8 and insert <at least one ground for doing so, specified by virtue of subsection (1A), is established, make an order amending (or further amending) the destruction date.

<(1A) The Scottish Ministers must, by regulations made by statutory instrument, specify the grounds on which an order under subsection (1) may be made.

(1B) Before making regulations under subsection (1A), the Scottish Ministers must consult such persons as they consider appropriate.

(1C) A statutory instrument containing regulations under subsection (1A) is subject to annulment in pursuance of a resolution of the Scottish Parliament.>

Kenny MacAskill

487 In section 59, page 73, line 17, at end insert—

<(4A) If the sheriff principal allows an appeal against the refusal of an application under subsection (1), the sheriff principal may make an order amending, or further amending, the destruction date.

(4B) An order under subsection (4A) must not specify a destruction date more than 2 years later than the previous destruction date.>

Kenny MacAskill

488 In section 59, page 73, line 23, leave out <expired> and insert <elapsed>

Kenny MacAskill

489 In section 59, page 73, line 28, leave out <expired> and insert <elapsed>

Kenny MacAskill

490 In section 59, page 73, line 33, after <information> insert <derived from a sample>

Kenny MacAskill

491 In section 59, page 73, line 34, leave out from <practicable> to end of line and insert <possible after the period has elapsed or, as the case may be, the appeal is withdrawn or determined.>

Kenny MacAskill

492 In section 59, page 73, line 37, leave out <section 18A(11)> and insert <subsection (11) of section 18A>

Robert Brown

382 In section 59, page 73, line 37, leave out from <18A(11)> to end of line 40 and insert <18B(10)>

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Kenny MacAskill

- 493 In section 59, page 74, line 1, leave out subsection (2)

James Kelly

- 412 In section 59, page 74, line 2, leave out from <after> to end of line and insert <at beginning insert “Except where section 18B applies and”>

Use of samples etc.

Kenny MacAskill

- 495 In section 60, page 74, line 6, leave out <This section> and insert <Subsection (2)>

Kenny MacAskill

- 496 In section 60, page 74, line 7, leave out <, or any information derived from relevant physical data,>

Kenny MacAskill

- 497 In section 60, page 74, line 12, leave out <, a sample or an impression> and insert <or a sample>

Kenny MacAskill

- 498 In section 60, page 74, line 17, leave out <relevant physical data or a sample or impression> and insert <a sample>

Kenny MacAskill

- 500 In section 60, page 74, line 19, leave out <, impression or information> and insert <or information derived from a sample>

Kenny MacAskill

- 501 In section 60, page 74, line 23, leave out <, sample or impression> and insert <or sample>

Kenny MacAskill

- 505 In section 60, page 74, line 38, leave out from <, impressions> to end of line 39 and insert <or information derived from a sample>

Kenny MacAskill

- 506 In section 60, page 75, leave out line 2

Kenny MacAskill

- 507 In section 60, page 75, leave out line 5

Kenny MacAskill

- 508 In section 60, page 75, line 7, leave out <, impression or relevant physical data>

Kenny MacAskill

- 509 In section 60, page 75, line 12, leave out <, impression>

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Kenny MacAskill

- 510** In section 60, page 75, line 14, leave out from beginning to <impression"> in line 25 and insert <, after "information" insert "derived from a sample",
- () in subsection (5)(b), the words "with all information derived from them" are repealed,
 - () in subsection (6)(a), for "it or them" substitute "the sample",
 - () in subsection (7)(a), the words "or relevant physical data", in the second place where they occur, are repealed.>

Scottish Criminal Cases Review Commission – grounds for appeal

Kenny MacAskill

- 133** In section 61, page 76, line 6, after <reasons> insert <for making the reference>

Kenny MacAskill

- 134** In section 61, page 76, line 9, leave out from <additional> to end of line 10 and insert <the appellant to found the appeal on additional grounds>

Kenny MacAskill

- 135** In section 61, page 76, line 19, leave out <additional grounds to be raised> and insert <the appeal to be founded on additional grounds>

