

Criminal Justice and Licensing (Scotland) Bill

6th 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 sixth 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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Collection of information on criminal injuries

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

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Notes on amendments in this group

Amendment 148 pre-empts amendments 568, 569, 570 and 571

Amendment 572 and amendment 149 are direct alternatives

Amendment 574 pre-empts amendment 150

Amendment 575 pre-empts amendment 151

Amendment 576 pre-empts amendment 152

Amendment 579 pre-empts amendment 153

Amendment 581 pre-empts amendment 154

Amendment 606 and amendment 158 are direct alternatives

Amendment 617 and amendment 159 are direct alternatives

Amendment 619 and amendment 160 are direct alternatives

Amendment 624 in group (Defence statements) and amendment 162 are direct alternatives

Amendment 626 in group (Application to court – orders preventing or restricting disclosure) pre-empts amendment 163 in this group

Amendment 646 in group (Application to court – orders preventing or restricting disclosure) and amendment 164 in this group are direct alternatives

Amendment 667 in group (Appeals against disclosure orders etc.) pre-empts amendment 165 in this group

Amendment 690 pre-empts amendment 166

Amendment 166 pre-empts amendment 691

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Amendments in debating order

Data matching for detection of fraud etc.

Kenny MacAskill

- 136** In section 70, page 89, line 34, leave out <and Wales>

Kenny MacAskill

- 137** In section 70, page 90, line 21, leave out from <body> to end of line 23 and insert <health and social care body mentioned in paragraphs (a) to (e) of section 1(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c.1).>

Collection of information on criminal injuries

Robert Brown

- 551** After section 71, insert—

<Collection of information on criminal injuries

Duty of Health Boards to collect etc. information on criminal injuries

- (1) The Scottish Ministers may make regulations requiring every Health Board to—
 - (a) collect information on criminal injuries treated in or otherwise coming to the attention of relevant hospitals, and
 - (b) provide that information to the relevant chief constable.
- (2) The Scottish Ministers must make the first regulations under subsection (1) before the expiry of 12 months beginning with the day of Royal Assent.
- (3) Regulations under subsection (1) must include provision that any information provided to a relevant chief constable must be in such a form that persons who have sustained criminal injuries cannot be identified.
- (4) Regulations under subsection (1) may include provision about—
 - (a) the criminal injuries about which information is to be collected (including by reference to the offences involved),
 - (b) the information on such injuries which is to be collected (including information as to the places at which, and circumstances in which, those injuries are sustained),
 - (c) the types of hospitals from which such information is to be collected (including the departments within such hospitals from which information is to be collected),
 - (d) the times at which and manner in which such information is to be provided to relevant chief constables.
- (5) In this section—

“criminal injuries” means injuries which are, or are suspected of having been, directly attributable to the commission of an offence involving violence,

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“Health Board” means a board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c.29),

“relevant chief constable” means the chief constable for the police force whose area comprises or includes all or part of the Health Board’s area,

“relevant hospitals” means hospitals the administration of which is the Health Board’s responsibility.>

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

Kenny MacAskill

138 In section 72, page 94, line 29, leave out <Law> and insert <Justice>

Kenny MacAskill

139 In section 72, page 94, line 41, leave out <27> and insert <37>

Kenny MacAskill

140 In section 72, page 94, line 42, leave out <penetrative>

Kenny MacAskill

141 In section 72, page 95, line 1, leave out <31> and insert <42>

Kenny MacAskill

142 In section 72, page 95, line 2, leave out <35> and insert <46>

Kenny MacAskill

144 In section 72, page 95, line 14, leave out <42> and insert <54>

Kenny MacAskill

198 In schedule 5, page 159, line 14, leave out <134> and insert <156>

Foreign travel orders – surrender of passports

Kenny MacAskill

444 In section 74, page 96, line 23, after <station> insert <in Scotland>

Kenny MacAskill

445 In section 74, page 97, line 5, leave out from <a> to end of line and insert—

<(a) a requirement under section 117A(2) (surrender of passports: England and Wales and Northern Ireland), or

(b) a requirement under section 117B(2) (surrender of passports: Scotland).”>

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Kenny MacAskill

446 In section 74, page 97, line 5, at end insert—

<(1C) A person may be prosecuted, tried and punished for any offence under subsection (1B)—

(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).”.>

Sex offender notification requirements

Kenny MacAskill

145 After section 74, insert—

<Sex offender notification requirements

Sex offender notification requirements

(1) The Sexual Offences Act 2003 (c.42) is amended as follows.

(2) In section 85 (notification requirements: periodic notification)—

(a) in subsection (1), for “period of one year” substitute “applicable period”,

(b) in subsection (3), for “period referred to in subsection (1)” substitute “applicable period”, and

(c) after subsection (4) insert—

“(5) In this section, the “applicable period” means—

(a) in any case where subsection (6) applies to the relevant offender, such period not exceeding one year as the Scottish Ministers may prescribe in regulations, and

(b) in any other case, the period of one year.

(6) This subsection applies to the relevant offender if the last home address notified by the offender under section 83(1) or 84(1) or subsection (1) was the address or location of such a place as is mentioned in section 83(7)(b).”.

(3) In section 86 (notification requirements: travel outside the United Kingdom), subsection (4) is repealed.

(4) In section 87 (method of notification and related matters), subsection (6) is repealed.

(5) In section 96 (information about release or transfer), subsection (4) is repealed.

(6) In section 138 (orders and regulations)—

(a) in subsection (2), after “84,” insert “85,” and

(b) after subsection (3) insert—

“(4) Orders or regulations made by the Scottish Ministers under this Act may—

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- (a) make different provision for different purposes,
- (b) include supplementary, incidental, consequential, transitional, transitory or saving provisions.”.>

Risk of sexual harm orders – spent convictions

Kenny MacAskill

146 After section 75, insert—

<Risk of sexual harm orders: spent convictions

In section 7 of the Rehabilitation of Offenders Act 1974 (c.53) (limitations on rehabilitation under the Act), in subsection (2), after paragraph (bb) insert—

“(bc) in any proceedings on an application under section 2, 4 or 5 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) or in any appeal under section 6 of that Act;”.>

Police and SCDEA – authorisation of surveillance

Kenny MacAskill

523 In section 77, page 98, leave out lines 5 to 10

Kenny MacAskill

524 In section 77, page 98, line 14, leave out from <(including> to <operation)> in line 15

Kenny MacAskill

525 In section 77, page 98, line 22, at end insert—

<() After that section insert—

“10A Authorisation of surveillance: joint surveillance operations

In the case of a joint surveillance operation, where authorisation is sought for the carrying out of any form of conduct to which this Act applies, authorisation may be granted by any one of the persons having power to grant authorisation for the carrying out of that conduct.”.>

Kenny MacAskill

526 In section 77, page 98, line 27, at end insert—

<() In section 14 (approval required for authorisations to take effect)—

- (a) in subsection (5)(b), after “General” insert “or the Deputy Director General”, and
- (b) subsection (7) is repealed.>

Kenny MacAskill

527 In section 77, page 98, line 27, at end insert—

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<() In section 16 (appeals against decisions by Surveillance Commissioners), in subsection (1), after “General” insert “or the Deputy Director General”.>

Kenny MacAskill

528 In section 77, page 98, line 30, leave out from <, where> to <surveillance,> in line 31

Police and SCDEA – authorisation of interference with property

Kenny MacAskill

529 In section 78, page 98, line 39, leave out <(3)> and insert <(3A)>

Kenny MacAskill

530 In section 78, page 99, line 1, leave out <(3A)> and insert <(3AA)>

Kenny MacAskill

531 In section 78, page 99, line 8, leave out <or>

Kenny MacAskill

532 In section 78, page 99, line 18, leave out <(3A)> and insert <(3AA)>

Kenny MacAskill

533 In section 78, page 99, line 23, at end insert—

<() in paragraph (cc) of subsection (6), after “General” insert “, or Deputy Director General.”.>

Kenny MacAskill

534 In section 78, page 99, line 26, leave out <(5)(a)> and insert <(5)>

Kenny MacAskill

535 In section 78, page 99, line 26, leave out <“where> and insert <“Where>

Kenny MacAskill

536 In section 78, page 99, line 29, after <operation,> insert <the person referred to in subsection (2)(h) is>

Enhanced criminal record certificates: disclosure of sex offender notification requirements

Kenny MacAskill

537 In section 79, page 99, line 39, at end insert—

<() In section 113B (enhanced criminal record certificates), in subsection (3), for the words from “, or” immediately following paragraph (a) to the end of paragraph (b), substitute “(or states that there is no such matter or information), and

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- (b) if the applicant is subject to notification requirements under Part 2 of the Sexual Offences Act 2003 (c.42), states that fact.”.>

Kenny MacAskill

- 538 In section 79, page 100, line 1, leave out <section 113B> and insert <that section>

Rehabilitation of offenders – spent alternatives to prosecution

Kenny MacAskill

- 447 After section 79, insert—

<Rehabilitation of offenders

Spent alternatives to prosecution: Rehabilitation of Offenders Act 1974

- (1) The Rehabilitation of Offenders Act 1974 (c.53) is amended as follows.
(2) After section 8A (protection afforded to spent cautions), insert—

“8B Protection afforded to spent alternatives to prosecution: Scotland

- (1) For the purposes of this Act, a person has been given an alternative to prosecution in respect of an offence if the person (whether before or after the commencement of this section)—
- (a) has been given a warning in respect of the offence by—
 - (i) a constable in Scotland, or
 - (ii) a procurator fiscal,
 - (b) has accepted, or is deemed to have accepted—
 - (i) a conditional offer issued in respect of the offence under section 302 of the Criminal Procedure (Scotland) Act 1995 (c.46), or
 - (ii) a compensation offer issued in respect of the offence under section 302A of that Act,
 - (c) has had a work order made against the person in respect of the offence under section 303ZA of that Act,
 - (d) has been given a fixed penalty notice in respect of the offence under section 129 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),
 - (e) has accepted an offer made by a procurator fiscal in respect of the offence to undertake an activity or treatment or to receive services or do any other thing as an alternative to prosecution, or
 - (f) in respect of an offence under the law of a country or territory outside Scotland, has been given, or has accepted or is deemed to have accepted, anything corresponding to a warning, offer, order or notice falling within paragraphs (a) to (e) under the law of that country or territory.
- (2) In this Act, references to an “alternative to prosecution” are to be read in accordance with subsection (1).
- (3) Schedule 3 to this Act (protection for spent alternatives to prosecution: Scotland) has effect.”.

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(3) After section 9A (unauthorised disclosure of spent cautions), insert—

“9B Unauthorised disclosure of spent alternatives to prosecution: Scotland

- (1) In this section—
 - (a) “official record” means a record that—
 - (i) contains information about persons given an alternative to prosecution in respect of an offence, and
 - (ii) is kept for the purposes of its functions by a court, police force, Government department, part of the Scottish Administration or other local or public authority in Scotland,
 - (b) “relevant information” means information imputing that a named or otherwise identifiable living person has committed, been charged with, prosecuted for or given an alternative to prosecution in respect of an offence which is the subject of an alternative to prosecution which has become spent,
 - (c) “subject of the information”, in relation to relevant information, means the named or otherwise identifiable living person to whom the information relates.
- (2) Subsection (3) applies to a person who, in the course of the person’s official duties (anywhere in the United Kingdom), has or has had custody of or access to an official record or the information contained in an official record.
- (3) The person commits an offence if the person—
 - (a) obtains relevant information in the course of the person’s official duties,
 - (b) knows or has reasonable cause to suspect that the information is relevant information, and
 - (c) discloses the information to another person otherwise than in the course of the person’s official duties.
- (4) Subsection (3) is subject to the terms of an order under subsection (6).
- (5) In proceedings for an offence under subsection (3), it is a defence for the accused to show that the disclosure was made—
 - (a) to the subject of the information or to a person whom the accused reasonably believed to be the subject of the information, or
 - (b) to another person at the express request of the subject of the information or of a person whom the accused reasonably believed to be the subject of the information.
- (6) The Scottish Ministers may by order provide for the disclosure of relevant information derived from an official record to be excepted from the provisions of subsection (3) in cases or classes of cases specified in the order.
- (7) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (8) A person commits an offence if the person obtains relevant information from an official record by means of fraud, dishonesty or bribery.

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- (9) A person guilty of an offence under subsection (8) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding 6 months, or to both.”
- (4) After Schedule 2 (protection for spent convictions) insert—

“SCHEDULE 3

PROTECTION FOR SPENT ALTERNATIVES TO PROSECUTION: SCOTLAND

Preliminary

- 1 (1) For the purposes of this Act, an alternative to prosecution given to any person (whether before or after the commencement of this Schedule) becomes spent—
- (a) in the case of—
 - (i) a warning referred to in paragraph (a) of subsection (1) of section 8B, or
 - (ii) a fixed penalty notice referred to in paragraph (d) of that subsection,at the time the warning or notice is given,
 - (b) in any other case, at the end of the relevant period.
- (2) The relevant period in relation to an alternative to prosecution is the period of 3 months beginning on the day on which the alternative to prosecution is given.
- (3) Sub-paragraph (1)(a) is subject to sub-paragraph (5).
- (4) Sub-paragraph (2) is subject to sub-paragraph (6).
- (5) If a person who is given a fixed penalty notice referred to in section 8B(1)(d) in respect of an offence is subsequently prosecuted and convicted of the offence, the notice—
- (a) becomes spent at the end of the rehabilitation period for the offence, and
 - (b) is to be treated as not having become spent in relation to any period before the end of that rehabilitation period.
- (6) If a person who is given an alternative to prosecution (other than one to which sub-paragraph (1)(a) applies) in respect of an offence is subsequently prosecuted and convicted of the offence—
- (a) the relevant period in relation to the alternative to prosecution ends at the same time as the rehabilitation period for the offence ends, and
 - (b) if the conviction occurs after the end of the period referred to sub-paragraph (2), the alternative to prosecution is to be treated as not having become spent in relation to any period before the end of the rehabilitation period for the offence.
- 2 (1) In this Schedule, “ancillary circumstances”, in relation to an alternative to prosecution, means any circumstances of the following—
- (a) the offence in respect of which the alternative to prosecution is given or the conduct constituting the offence,
 - (b) any process preliminary to the alternative to prosecution being given (including consideration by any person of how to deal with the offence and the procedure for giving the alternative to prosecution),

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- (c) any proceedings for the offence which took place before the alternative to prosecution was given (including anything that happens after that time for the purpose of bringing the proceedings to an end),
 - (d) any judicial review proceedings relating to the alternative to prosecution,
 - (e) in the case of an offer referred to in paragraph (e) of subsection (1) of section 8B, anything done or undergone in pursuance of the terms of the offer.
- (2) Where an alternative to prosecution is given in respect of two or more offences, references in sub-paragraph (1) to the offence in respect of which the alternative to prosecution is given includes a reference to each of the offences.
 - (3) In this Schedule, “proceedings before a judicial authority” has the same meaning as in section 4.

Protection for spent alternatives to prosecution and ancillary circumstances

- 3 (1) A person who is given an alternative to prosecution in respect of an offence is, from the time the alternative to prosecution becomes spent, to be treated for all purposes in law as a person who has not committed, been charged with or prosecuted for, or been given an alternative to prosecution in respect of, the offence.
 - (2) Despite any enactment or rule of law to the contrary—
 - (a) where an alternative to prosecution given to a person in respect of an offence has become spent, evidence is not admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in Scotland to prove that the person has committed, been charged with or prosecuted for, or been given an alternative to prosecution in respect of, the offence,
 - (b) a person must not, in any such proceedings, be asked any question relating to the person’s past which cannot be answered without acknowledging or referring to an alternative to prosecution that has become spent or any ancillary circumstances, and
 - (c) if a person is asked such a question in any such proceedings, the person is not required to answer it.
 - (3) Sub-paragraphs (1) and (2) do not apply in relation to any proceedings—
 - (a) for the offence in respect of which the alternative to prosecution was given, and
 - (b) which are not part of the ancillary circumstances.
- 4 (1) This paragraph applies where a person (“A”) is asked a question, otherwise than in proceedings before a judicial authority, seeking information about—
 - (a) A’s or another person’s previous conduct or circumstances,
 - (b) offences previously committed by A or the other person, or
 - (c) alternatives to prosecution previously given to A or the other person.
 - (2) The question is to be treated as not relating to alternatives to prosecution that have become spent or to any ancillary circumstances and may be answered accordingly.

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- (3) A is not to be subjected to any liability or otherwise prejudiced in law because of a failure to acknowledge or disclose an alternative to prosecution that has become spent or any ancillary circumstances in answering the question.
- 5
- (1) An obligation imposed on a person (“A”) by a rule of law or by the provisions of an agreement or arrangement to disclose any matter to another person does not extend to requiring A to disclose an alternative to prosecution (whether one given to A or another person) that has become spent or any ancillary circumstances.
 - (2) An alternative to prosecution that has become spent or any ancillary circumstances, or any failure to disclose an alternative to prosecution that has become spent or any ancillary circumstances, is not a ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing the person in any way in any occupation or employment.
- 6
- The Scottish Ministers may by order—
- (a) exclude or modify the application of any of paragraphs (a) to (c) of paragraph 3(2) in relation to questions put in such circumstances as may be specified in the order,
 - (b) provide for exceptions from any of the provisions of paragraphs 4 and 5 in such cases or classes of case, or in relation to alternatives to prosecution of such descriptions, as may be specified in the order.
- 7
- Paragraphs 3 to 5 do not affect—
- (a) the operation of an alternative to prosecution, or
 - (b) the operation of an enactment by virtue of which, because of an alternative to prosecution, a person is subject to a disqualification, disability, prohibition or other restriction or effect for a period extending beyond the time at which the alternative to prosecution becomes spent.
- 8
- (1) Section 7(2), (3) and (4) apply for the purpose of this Schedule as follows.
 - (2) Subsection (2), apart from paragraphs (b) and (d), applies to the determination of any issue, and the admission or requirement of evidence, relating to alternatives to prosecution previously given to a person and to ancillary circumstances as it applies to matters relating to a person’s previous convictions and circumstances ancillary thereto.
 - (3) Subsection (3) applies to evidence of alternatives to prosecution previously given to a person and ancillary circumstances as it applies to evidence of a person’s previous convictions and the circumstances ancillary thereto.
 - (4) For that purpose, subsection (3) has effect as if—
 - (a) a reference to subsection (2) or (4) of section 7 were a reference to that subsection as applied by this paragraph, and
 - (b) the words “or proceedings to which section 8 below applies” were omitted.
 - (5) Subsection (4) applies for the purpose of excluding the application of paragraph 3.
 - (6) For that purpose, subsection (4) has effect as if the words “(other than proceedings to which section 8 below applies)” were omitted.

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- (7) References in the provisions applied by this paragraph to section 4(1) are to be read as references to paragraph 3.”>

Kenny MacAskill

452 In schedule 5, page 152, line 12, leave out from <In> to <1974> and insert—

- <() The Rehabilitation of Offenders Act 1974 is amended as follows.
() In section 1>

Kenny MacAskill

453 In schedule 5, page 152, line 15, at end insert—

- <() In section 6(6)(bb) (convictions in service disciplinary proceedings), for “the Schedule” substitute “Schedule 1”.
() The Schedule (service disciplinary proceedings) is renumbered as Schedule 1.>

Medical services in prisons

Kenny MacAskill

448 After section 79, insert—

<Medical services in prisons

Medical services in prisons

- (1) For section 3A of the Prisons (Scotland) Act 1989 (c.45) (medical services in prisons) substitute—

“3A Medical officers for prisons

- (1) The Scottish Ministers must designate one or more medical officers for each prison.
- (2) A person may be designated as a medical officer for a prison only if the person is a registered medical practitioner performing primary medical services for prisoners at the prison under the National Health Service (Scotland) Act 1978 (c.29).
- (3) A medical officer has the functions that are conferred on a medical officer for a prison by or under this Act or any other enactment.
- (4) A medical officer is not an officer of the prison for the purposes of this Act.
- (5) Rules under section 39 of this Act may provide for the governor of a prison to authorise the carrying out by officers of the prison of a search of any person who is in, or is seeking to enter, the prison for the purpose of providing medical services for any prisoner at the prison.
- (6) Nothing in rules made by virtue of subsection (5) allows the governor to authorise an officer of a prison to require a person to remove any of the person’s clothing other than an outer coat, jacket, headgear, gloves and footwear.”.
- (2) In section 41D of that Act (unlawful disclosure of information by medical officers), for subsection (1) substitute—

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- “(1) This section applies to—
- (a) a medical officer for a prison, and
 - (b) any person acting under the supervision of such a medical officer.”.
- (3) In section 107 of the Criminal Justice and Public Order Act 1994 (c.33) (officers of contracted out prisons), for subsections (6) to (8) substitute—
- “(6) The director must designate one or more medical officers for the prison.
- (7) A person may be designated as a medical officer for the prison only if the person is a registered medical practitioner performing primary medical services for prisoners at the prison under the National Health Service (Scotland) Act 1978 (c.29).”.
- (4) In section 110 of that Act (consequential modifications of the 1989 Act etc.)—
- (a) in each of subsections (3) and (4), for “3A(6)” substitute “3A(5) and (6)”,
 - (b) subsection (4A) is repealed, and
 - (c) in subsection (6), for “3A(1) to (5) (medical services)” substitute “3A(1) and (2) (medical officers)”.
- (5) In section 111(3) of that Act (intervention by the Scottish Ministers), in paragraph (c), after “prison” insert “and the medical officer or officers for the prison”.>

Assistance for victim support

Angela Constance

- 413** In section 80, page 100, line 29, after <victims> insert <(including children and young people)>

Disclosure - meaning of “information”

Kenny MacAskill

- 696** In section 85, page 104, line 7, leave out <an accused> and insert <criminal proceedings relating to a person>

Kenny MacAskill

- 553** In section 85, page 104, line 7, leave out <(other than precognitions and victim statements)>

Kenny MacAskill

- 697** In section 85, page 104, line 9, leave out <case against the accused> and insert <proceedings>

Kenny MacAskill

- 555** In section 85, page 104, line 10, leave out subsection (2)

Kenny MacAskill

- 556** In section 85, page 104, line 20, at end insert—

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- <(3) In sections (*Duty to disclose after conclusion of proceedings at first instance*) to (*Review of ruling under section (Application by appellant for ruling on disclosure)*) “information”, in relation to appellate proceedings, includes material of any kind given to or obtained by the prosecutor in connection with the appellate proceedings or the earlier proceedings.
- (4) In subsection (3)—
- “appellate proceedings” has the meaning given by section (*Sections (Duty to disclose after conclusion of proceedings at first instance) to (Review of ruling under section (Application by appellant for ruling on disclosure))*): interpretation),
- “earlier proceedings” has the meaning given in section (*Duty to disclose after conclusion of proceedings at first instance*)(5).>

Provision of information to prosecutor

Kenny MacAskill

557 Leave out section 86 and insert—

<Provision of information to prosecutor: solemn cases

- (1) This section applies where in a prosecution—
- (a) an accused appears for the first time on petition, or
- (b) an accused appears for the first time on indictment (not having appeared on petition in relation to the same matter).
- (2) As soon as practicable after the appearance, the investigating agency must provide the prosecutor with details of all the information that may be relevant to the case for or against the accused that the agency is aware of that was obtained (whether by the agency or otherwise) in the course of investigating the matter to which the appearance relates.
- (3) As soon as practicable after being required to do so by the prosecutor, the investigating agency must provide the prosecutor with any of that information that the prosecutor specifies in the requirement.
- (4) In this section, “investigating agency” means—
- (a) a police force, or
- (b) such other person who—
- (i) engages (to any extent) in the investigation of crime or sudden deaths, and
- (ii) submits reports relating to those investigations to the procurator fiscal,
- as the Scottish Ministers may prescribe by regulations.>

Kenny MacAskill

558 In section 87, page 105, line 24, leave out <86(3)> and insert <(Provision of information to prosecutor: solemn cases)(2)>

Kenny MacAskill

559 In section 87, page 105, line 30, leave out subsection (2) and insert—

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- <() As soon as practicable after becoming aware of the further information, the investigating agency must provide the prosecutor with details of it.
- () As soon as practicable after being required to do so by the prosecutor, the investigating agency must provide the prosecutor with any of that further information that the prosecutor specifies in the requirement.>

Kenny MacAskill

- 560** In section 87, page 105, line 33, leave out from beginning to <“the> in line 34

Kenny MacAskill

- 561** In section 87, page 105, line 35, leave out <86(3)> and insert <(Provision of information to prosecutor: solemn cases)(2)>

Kenny MacAskill

- 562** In section 87, page 106, line 1, leave out <this section> and insert <subsection (3)>

Kenny MacAskill

- 563** Leave out section 88

Kenny MacAskill

- 564** After section 88, insert—

<Provision of information to prosecutor: summary cases

- (1) This section applies where a plea of not guilty is recorded against an accused charged on summary complaint.
- (2) As soon as practicable after the recording of the plea, the investigating agency must inform the prosecutor of the existence of all the information that may be relevant to the case for or against the accused that the agency is aware of that was obtained (whether by the agency or otherwise) in the course of investigating the matter to which the plea relates.
- (3) As soon as practicable after being required to do so by the prosecutor, the investigating agency must provide the prosecutor with any of that information that the prosecutor specifies in the requirement.>

Kenny MacAskill

- 565** After section 88, insert—

<Continuing duty of investigating agency: summary cases

- (1) This section applies where—
 - (a) an investigating agency has complied with section (*Provision of information to prosecutor: summary cases*)(2) in relation to an accused, and
 - (b) during the relevant period the investigating agency becomes aware that further information that may be relevant to the case for or against the accused has been obtained (whether by the agency or otherwise) in the course of investigating the accused’s case.
- (2) As soon as practicable after becoming aware of the further information, the investigating agency must inform the prosecutor of the existence of the information.

THIS IS NOT THE MARSHALLED LIST

- (3) As soon as practicable after being required to do so by the prosecutor, the investigating agency must provide the prosecutor with any of that further information that the prosecutor specifies in the requirement.
- (4) In this section, “relevant period” means the period—
 - (a) beginning with the investigating agency’s compliance with section (*Provision of information to prosecutor: summary cases*)(2) in relation to the accused, and
 - (b) ending with the agency’s receiving notice from the prosecutor of the conclusion of the proceedings against the accused.
- (5) For the purposes of subsection (4), proceedings against an accused are to be taken to be concluded if—
 - (a) a plea of guilty is recorded against the accused,
 - (b) the accused is acquitted,
 - (c) the proceedings against the accused are deserted *simpliciter*,
 - (d) the accused is convicted and does not appeal against the conviction before the expiry of the time allowed for such an appeal,
 - (e) the proceedings are deserted *pro loco et tempore* for any reason and no further trial diet is appointed, or
 - (f) the complaint falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation.>

Kenny MacAskill

- 689** In section 116, page 119, line 20, leave out from <“prosecutor”> to end of line 21 and insert—
<“investigating agency” has the meaning given by section (*Provision of information to prosecutor: solemn cases*)(4),
“procurator fiscal” and “prosecutor” have the meanings given by section 307(1) of the 1995 Act.>

Prosecutor’s duty to disclose information

Kenny MacAskill

- 566** In section 89, page 106, line 31, after <where> insert <in a prosecution>

Kenny MacAskill

- 567** In section 89, page 106, line 33, after <indictment> insert <(not having appeared on petition in relation to the same matter)>

Bill Aitken

- 147** In section 89, page 106, line 37, leave out <review all the> and insert <disclose to the accused all>

Bill Aitken

- 148** In section 89, page 106, line 38, leave out from <and> to end of line 14 on page 107

THIS IS NOT THE MARSHALLED LIST

Kenny MacAskill

- 568** In section 89, page 107, line 1, leave out from beginning to <applies> in line 2 and insert—
<(b) disclose to the accused the information to which subsection (3) applies.
(3) This subsection applies to information>

Kenny MacAskill

- 569** In section 89, page 107, line 3, leave out <prosecution case> and insert <evidence that is likely to be led by the prosecutor in the proceedings against the accused>

Kenny MacAskill

- 570** In section 89, page 107, line 5, leave out <prosecution case> and insert <evidence to be led by the prosecutor in the proceedings against the accused>

Kenny MacAskill

- 571** In section 89, page 107, line 6, leave out subsections (4) to (6)

Kenny MacAskill

- 572** In section 89, page 107, line 15, leave out <(5)> and insert <(2)(b)>

Bill Aitken

- 149** In section 89, page 107, line 15, leave out <(5)> and insert <(2)>

Kenny MacAskill

- 573** After section 89, insert—

<Disclosure of other information: solemn cases

- (1) This section applies where by virtue of subsection (2)(b) of section 89 the prosecutor is required to disclose information to an accused who falls within paragraph (a) or (b) of subsection (1) of that section.
- (2) As soon as practicable after complying with the requirement, the prosecutor must disclose to the accused details of any information which the prosecutor is not required to disclose under section 89(2)(b) but which may be relevant to the case for or against the accused.
- (3) The prosecutor need not disclose under subsection (2) details of sensitive information.
- (4) In subsection (3), “sensitive”, in relation to an item of information, means that if it were to be disclosed there would be a risk of—
 - (a) causing serious injury, or death, to any person,
 - (b) obstructing or preventing the prevention, detection, investigation or prosecution of crime, or
 - (c) causing serious prejudice to the public interest.>

Kenny MacAskill

- 574** In section 90, page 107, line 19, leave out <subsection (5) or (6) of section 89> and insert <section 89(2)(b)>

THIS IS NOT THE MARSHALLED LIST

Bill Aitken

150 In section 90, page 107, line 19, leave out <(5) or (6)> and insert <(2)>

Kenny MacAskill

575 In section 90, page 107, line 24, leave out from beginning to <“the> in line 27 and insert <and

(b) disclose to the accused any information to which section 89(3) applies.

(2A) As soon as practicable after complying with subsection (2), the prosecutor must disclose to the accused details of any other information that may be relevant to the case for or against the accused of which the prosecutor is aware.

(2B) The prosecutor need not disclose under subsection (2A) details of sensitive information.

(2C) In subsection (2)>

Bill Aitken

151 In section 90, page 107, leave out lines 24 to 26 and insert <and

(b) disclose to the accused any such information not already disclosed under section 89(2).>

Kenny MacAskill

576 In section 90, page 107, line 28, leave out <subsection (5) or (6) of section 89> and insert <section 89(2)(b)>

Bill Aitken

152 In section 90, page 107, line 28, leave out <(5) or (6)> and insert <(2)>

Kenny MacAskill

577 In section 90, page 107, line 30, at end insert—

<“sensitive” has the meaning given by section (*Disclosure of other information: solemn cases*)(4).>

Kenny MacAskill

578 In section 90, page 107, line 31, leave out <this section> and insert <subsection (2C)>

Kenny MacAskill

579 In section 91, page 108, line 5, leave out <under section 89(5) or 90(2)> and insert <by virtue of this Part>

Bill Aitken

153 In section 91, page 108, line 5, leave out <89(5) or 90(2)> and insert <89(2) or 90(2)(b)>

Kenny MacAskill

580 Move section 91 to after section 99

Kenny MacAskill

581 In section 92, page 108, line 10, leave out from <section> to <accused> in line 11 and insert <this Part the prosecutor is required to disclose>

THIS IS NOT THE MARSHALLED LIST

Bill Aitken

- 154** In section 92, page 108, line 10, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2) or 90(2)(b)>

Kenny MacAskill

- 582** Move section 92 to after section 96

Bill Aitken

- 155** In section 93, page 108, line 20, leave out <(5)> and insert <(2)>

Kenny MacAskill

- 583** Leave out section 93

Bill Aitken

Supported by: Robert Brown

- 156** Leave out section 94

Bill Aitken

Supported by: Robert Brown

- 157** Leave out section 95

Kenny MacAskill

- 606** In section 96, page 110, line 28, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2)(b), 90(2)(b), 94(1A)(b) or 95(3)(b)>

Bill Aitken

- 158** In section 96, page 110, line 28, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2) or 90(2)(b)>

Kenny MacAskill

- 607** In section 96, page 110, line 32, leave out from <is> to end of line and insert <but for that plea would have been likely to have formed part of the evidence to be led by the prosecutor in the proceedings against the accused.>

Kenny MacAskill

- 617** In section 97, page 110, line 36, leave out <section 89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <this Part>

Bill Aitken

- 159** In section 97, page 110, line 36, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2) or 90(2)(b)>

Kenny MacAskill

- 619** In section 98, page 111, line 5, leave out <section 89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <this Part>

THIS IS NOT THE MARSHALLED LIST

Bill Aitken

- 160 In section 98, page 111, line 5, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2) or 90(2)(b)>

Bill Aitken

- 161 In section 100, page 111, line 36, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2) or 90(2)(b)>

Bill Aitken

- 162 In section 102, page 112, line 26, leave out from <89(5)> to <information> in line 28 and insert <89(2) or 90(2)(b) the prosecutor is required to disclose an item of information to an accused>

Bill Aitken

- 163 In section 102, page 113, line 5, leave out from <89(5)> to end of line 6 and insert <89(2) or, as the case may be, 90(2)(b)>

Bill Aitken

- 164 In section 106, page 115, line 14, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2) or 90(2)(b)>

Bill Aitken

- 165 In section 111, page 117, line 6, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2) or 90(2)(b)>

Kenny MacAskill

- 690 In section 116, page 119, line 24, leave out <89(5) and (6),> and insert <89(2)(b),
() section (*Disclosure of other information: solemn cases*)(2),>

Bill Aitken

- 166 In section 116, page 119, line 24, leave out from <89(5)> to end of line 27 and insert <89(2),
(b) section 90(1) and (2),
(c) section 93(2) (where it first occurs),>

Kenny MacAskill

- 691 In section 116, page 119, leave out line 26

Defence statements

Kenny MacAskill

- 584 In section 94, page 108, line 30, leave out from beginning to <pre-trial> in line 31 and insert—
<(1) This section applies where the accused lodges a defence statement under section 70A of the 1995 Act.
(1A) As soon as practicable after the prosecutor receives a copy of the defence>

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Kenny MacAskill

- 585 In section 94, page 108, leave out lines 34 to 36 and insert <and
(b) disclose to the accused any information to which section 89(3) applies.>

Kenny MacAskill

- 586 In section 94, page 109, line 8, leave out lines 8 to 13 and insert—
<(4) At least 7 days before the trial diet the accused must—
(a) where there has been no material change in circumstances in relation to the accused's defence since the last defence statement was lodged, lodge a statement stating that fact,
(b) where there has been a material change in circumstances in relation to the accused's defence since the last defence statement was lodged, lodge a defence statement.>

Kenny MacAskill

- 587 In section 94, page 109, line 13, at end insert—
<(4A) If after lodging a statement under subsection (2), (3) or (4) there is a material change in circumstances in relation to the accused's defence, the accused must lodge a defence statement.
(4B) Where subsection (4A) requires a defence statement to be lodged, it must be lodged before the trial diet begins unless on cause shown the court allows it to be lodged during the trial diet.>

Kenny MacAskill

- 588 In section 94, page 109, line 14, after <statement> insert—
<()>

Kenny MacAskill

- 589 In section 94, page 109, line 14, leave out <other>

Kenny MacAskill

- 590 In section 94, page 109, line 15, at end insert <or
() during the trial diet if the court on cause shown allows it.>

Kenny MacAskill

- 591 In section 94, page 109, line 15, at end insert—
<() As soon as practicable after lodging a defence statement or a statement under subsection (4)(a), the accused must send a copy of the statement to the prosecutor and any co-accused.>

Kenny MacAskill

- 592 In section 94, page 109, line 20, at end insert—
<() particulars of the matters of fact on which the accused intends to rely for the purposes of the accused's defence,>

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Kenny MacAskill

593 In section 94, page 109, line 21, leave out <in relation to disclosure>

Kenny MacAskill

594 In section 94, page 109, line 27, at end insert—

<() In section 78 of the 1995 Act (special defences, incrimination, notice of witnesses etc.), after subsection (1) insert—

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

- (a) the accused lodges a defence statement under section 70A, and
- (b) the accused’s defence consists of or includes a special defence.”.>

Kenny MacAskill

595 In section 95, page 109, line 32, leave out <prosecutor receives from the accused> and insert <accused lodges>

Kenny MacAskill

596 In section 95, page 109, line 38, at end insert—

<() particulars of the matters of fact on which the accused intends to rely for the purposes of the accused’s defence,>

Kenny MacAskill

597 In section 95, page 109, line 39, leave out <in relation to disclosure>

Kenny MacAskill

598 In section 95, page 110, line 4, at end insert—

<() As soon as practicable after lodging a defence statement, the accused must send a copy of the statement to the prosecutor and any co-accused.>

Kenny MacAskill

599 In section 95, page 110, line 5, after <receiving> insert <a copy of>

Kenny MacAskill

600 In section 95, page 110, leave out lines 8 to 10 and insert <and

(b) disclose to the accused any information to which section 89(3) applies.>

Kenny MacAskill

601 In section 95, page 110, line 24, at end insert—

<() In section 149B of the 1995 Act (notice of defences), after subsection (2) insert—

“(2A) Subsection (1) does not apply where—

- (a) the accused lodges a defence statement under section 95 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 00),
- (b) the statement is lodged—
 - (i) where an intermediate diet is to be held, at or before the diet, or

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- (ii) where such a diet is not to be held, no later than 10 clear days before the trial diet, and
- (c) the accused's defence consists of or includes a defence to which that subsection applies.".>

Kenny MacAskill

602 After section 95, insert—

<Change in circumstances following lodging of defence statement: summary proceedings

- (1) This section applies where the accused lodges a defence statement under section 95 at least 14 days before the trial diet.
- (2) At least 7 days before the trial diet the accused must—
 - (a) where there has been no material change in circumstances in relation to the accused's defence since the defence statement was lodged, lodge a statement stating that fact,
 - (b) where there has been a material change in circumstances in relation to the accused's defence since the defence statement was lodged, lodge a defence statement.
- (3) If after lodging a statement under subsection (2) there is a material change in circumstances in relation to the accused's defence, the accused must lodge a defence statement.
- (4) Where subsection (3) requires a defence statement to be lodged, it must be lodged before the trial diet begins unless on cause shown the court allows it to be lodged during the trial diet.
- (5) As soon as practicable after lodging a statement under subsection (2)(a) or a defence statement under subsection (2)(b) or (3), the accused must send a copy of the statement concerned to the prosecutor and any co-accused.
- (6) As soon as practicable after receiving a copy of a defence statement lodged under subsection (2)(b) or (3) the prosecutor must—
 - (a) review all the information that may be relevant to the case for or against the accused of which the prosecutor is aware, and
 - (b) disclose to the accused any information to which section 89(3) applies.
- (7) In this section, "defence statement" is to be construed in accordance with section 95(2).>

Kenny MacAskill

611 After section 96, insert—

<Application to prosecutor for further disclosure

- (1) This section applies where—
 - (a) the prosecutor has complied with section (*Duty to disclose after conclusion of proceedings at first instance*)(2) in relation to an appellant, and
 - (b) the appellant lodges a further disclosure request—
 - (i) during the preliminary period, or

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- (ii) if the court on cause shown allows it, after the preliminary period but before the relevant conclusion.
- (2) A further disclosure request must set out—
 - (a) by reference to the grounds of appeal, the nature of the information that the appellant wishes the prosecutor to disclose, and
 - (b) the reasons why the appellant considers that disclosure by the prosecutor of any such information is necessary.
- (3) As soon as practicable after receiving a copy of the further disclosure request the prosecutor must—
 - (a) review any information of which the prosecutor is aware that relates to the request, and
 - (b) disclose to the appellant any of that information that falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).
- (4) In this section—
 - “preliminary period”, in relation to the appellate proceedings concerned, means the period beginning with the relevant act and ending with the beginning of the hearing of the appellate proceedings,
 - “relevant act” has the meaning given by section (*Duty to disclose after conclusion of proceedings at first instance*)(5),
 - “relevant conclusion” has the meaning given by section (*Continuing duty of prosecutor*)(5).>

Kenny MacAskill

- 624** In section 102, page 112, line 26, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2)(b), 90(2)(b), 94(1A)(b), 95(3)(b) or (*Change in circumstances following lodging of defence statement: summary proceedings*)(6)(b)>

Court rulings on disclosure

Kenny MacAskill

- 603** After section 95, insert—

<Court rulings on disclosure

Application by accused for ruling on disclosure

- (1) This section applies where the accused—
 - (a) has lodged a defence statement under section 70A of the 1995 Act or section 95 or (*Change in circumstances following lodging of defence statement: summary proceedings*) of this Act, and
 - (b) considers that the prosecutor has failed, in responding to the statement, to disclose to the accused an item of information to which section 89(3) applies (the “information in question”).
- (2) The accused may apply to the court for a ruling on whether section 89(3) applies to the information in question.

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- (3) An application under subsection (2) is to be made in writing and must set out—
 - (a) where the accused is charged with more than one offence, the charge or charges to which the application relates,
 - (b) a description of the information in question, and
 - (c) the accused’s grounds for considering that section 89(3) applies to the information in question.
- (4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.
- (5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—
 - (a) comply with subsection (3), or
 - (b) otherwise disclose any reasonable grounds for considering that section 89(3) applies to the information in question.
- (6) At a hearing appointed under subsection (4), the court must give the prosecutor and the accused an opportunity to be heard before determining the application.
- (7) On determining the application, the court must—
 - (a) make a ruling on whether section 89(3) applies to the information in question or to any part of the information in question, and
 - (b) where the accused is charged with more than one offence, specify the charge or charges to which the ruling relates.
- (8) Except where it is impracticable to do so, the application is to be assigned to the justice of the peace, sheriff or judge who is presiding, or is to preside, at the accused’s trial.>

Kenny MacAskill

604 After section 95, insert—

<Review of ruling under section (*Application by accused for ruling on disclosure*)

- (1) This section applies where—
 - (a) the court has made a ruling under section (*Application by accused for ruling on disclosure*) that section 89(3) does not apply to an item of information (the “information in question”), and
 - (b) during the relevant period—
 - (i) the accused becomes aware of information (the “secondary information”) that was unavailable to the court at the time it made its ruling, and
 - (ii) the accused considers that, had the secondary information been available to the court at that time, it would have made a ruling that section 89(3) does apply to the information in question.
- (2) The accused may apply to the court which made the ruling for a review of the ruling.
- (3) An application under subsection (2) is to be made in writing and must set out—
 - (a) where the accused is charged with more than one offence, the charge or charges to which the application relates,
 - (b) a description of the information in question and the secondary information, and

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- (c) the accused's grounds for considering that section 89(3) applies to the information in question.
- (4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.
- (5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—
 - (a) comply with subsection (3), or
 - (b) otherwise disclose any reasonable grounds for considering that section 89(3) applies to the information in question.
- (6) At a hearing appointed under subsection (4), the court must give the prosecutor and the accused an opportunity to be heard before determining the application.
- (7) On determining the application, the court may—
 - (a) affirm the ruling being reviewed, or
 - (b) recall that ruling and—
 - (i) make a ruling that section 89(3) applies to the information in question or to any part of the information in question, and
 - (ii) where the accused is charged with more than one offence, specify the charge or charges to which the ruling relates.
- (8) Except where it is impracticable to do so, the application is to be assigned to the justice of the peace, sheriff or judge who dealt with the application for the ruling that is being reviewed.
- (9) Nothing in this section affects any right of appeal in relation to the ruling being reviewed.
- (10) In this section, “relevant period”, in relation to an accused, means the period—
 - (a) beginning with the making of the ruling being reviewed, and
 - (b) ending with the conclusion of proceedings against the accused.
- (11) For the purposes of subsection (10), proceedings against the accused are taken to be concluded if—
 - (a) a plea of guilty is recorded against the accused,
 - (b) the accused is acquitted,
 - (c) the proceedings against the accused are deserted *simpliciter*,
 - (d) the accused is convicted and does not appeal against the conviction before expiry of the time allowed for such an appeal,
 - (e) the proceedings are deserted *pro loco et tempore* for any reason and no further trial diet is appointed, or
 - (f) the indictment or complaint falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation.>

Kenny MacAskill

605 After section 95, insert—

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<Appeals against rulings under section (*Application by accused for ruling on disclosure*)

- (1) The prosecutor or the accused may, within the period of 7 days beginning with the day on which a ruling is made under section (*Application by accused for ruling on disclosure*), appeal to the High Court against the ruling.
- (2) Where an appeal is brought under subsection (1), the court of first instance or the High Court may—
 - (a) postpone any trial diet that has been appointed for such period as it thinks appropriate,
 - (b) adjourn or further adjourn any hearing for such period as it thinks appropriate,
 - (c) direct that any period of postponement or adjournment under paragraph (a) or (b) or any part of such period is not to count toward any time limit applying in the case.
- (3) In disposing of an appeal under subsection (1), the High Court may—
 - (a) affirm the ruling, or
 - (b) remit the case back to the court of first instance with such directions as the High Court thinks appropriate.
- (4) This section does not affect any other right of appeal which any party may have in relation to a ruling under section (*Application by accused for ruling on disclosure*).>

Kenny MacAskill

615 After section 96, insert—

<Court rulings on disclosure: appellate proceedings

Application by appellant for ruling on disclosure

- (1) This section applies where the appellant—
 - (a) has made a further disclosure request under section (*Application to prosecutor for further disclosure*), and
 - (b) considers that the prosecutor has failed, in responding to the request, to disclose to the appellant an item of information falling within section (*Duty to disclose after conclusion of proceedings at first instance*)(3) (the “information in question”).
- (2) The appellant may apply to the court for a ruling on whether the information in question falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).
- (3) An application under subsection (2) is to be made in writing and must set out—
 - (a) where the appellant is or was charged with more than one offence, the charge or charges to which the application relates,
 - (b) a description of the information in question, and
 - (c) the appellant’s grounds for considering that the information in question falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).
- (4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.

THIS IS NOT THE MARSHALLED LIST

- (5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—
 - (a) comply with subsection (3), or
 - (b) otherwise disclose any reasonable grounds for considering that the information in question falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).
- (6) At a hearing appointed under subsection (4), the court must give the prosecutor and the appellant an opportunity to be heard before determining the application.
- (7) On determining the application, the court must—
 - (a) make a ruling on whether the information in question, or any part of the information in question, falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3), and
 - (b) where the appellant is or was charged with more than one offence, specify the charge or charges to which the ruling relates.
- (8) In this section, “the court” means the court before which the appellant’s appeal is brought.
- (9) Except where it is impracticable to do so, the application is to be assigned to the judges who are to hear the appellant’s appeal.>

Kenny MacAskill

616 After section 96, insert—

<Review of ruling under section (*Application by appellant for ruling on disclosure*)

- (1) This section applies where—
 - (a) the court has made a ruling under section (*Application by appellant for ruling on disclosure*) that an item of information (the “information in question”) does not fall within section (*Duty to disclose after conclusion of proceedings at first instance*)(3), and
 - (b) during the relevant period—
 - (i) the appellant becomes aware of information (“secondary information”) that was unavailable to the court at the time it made its ruling, and
 - (ii) the appellant considers that, had the secondary information been available to the court at that time, it would have made a ruling that the information in question does fall within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).
- (2) The appellant may apply to the court which made the ruling for a review of the ruling.
- (3) An application under subsection (2) is to be made in writing and must set out—
 - (a) where the appellant is or was charged with more than one offence, the charge or charges to which the application relates,
 - (b) a description of the information in question and the secondary information, and
 - (c) the appellant’s grounds for considering that the information in question falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).

THIS IS NOT THE MARSHALLED LIST

- (4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.
- (5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—
 - (a) comply with subsection (3), or
 - (b) otherwise disclose any reasonable grounds for considering that the information in question falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).
- (6) At a hearing appointed under subsection (4), the court must give the prosecutor and the appellant an opportunity to be heard before determining the application.
- (7) On determining the application, the court may—
 - (a) affirm the ruling being reviewed, or
 - (b) recall that ruling and—
 - (i) make a ruling that the information in question, or any part of the information in question, falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3), and
 - (ii) where the appellant is or was charged with more than one offence, specify the charge or charges to which the ruling relates.
- (8) Except where it is impracticable to do so, the application is to be assigned to the judges who dealt with the application for the ruling that is being reviewed.
- (9) Nothing in this section affects any right of appeal in relation to the ruling being reviewed.
- (10) In this section, “relevant period”, in relation to an appellant, means the period—
 - (a) beginning with the making of the ruling being reviewed, and
 - (b) ending with the relevant conclusion.
- (11) In subsection (10), “relevant conclusion” has the meaning given by section (*Continuing duty of prosecutor*)(5).>

Disclosure – application to appellate proceedings

Kenny MacAskill

608 After section 96, insert—

<Disclosure after conclusion of proceedings at first instance

Sections (*Duty to disclose after conclusion of proceedings at first instance*) to (*Review of ruling under section (Application by appellant for ruling on disclosure)*): interpretation

In sections (*Duty to disclose after conclusion of proceedings at first instance*) to (*Review of ruling under section (Application by appellant for ruling on disclosure)*)—

“appellant”, in relation to appellate proceedings, includes a person authorised by an order under section 303A(4) of the 1995 Act to institute or continue the proceedings,

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“appellate proceedings” means—

- (a) an appeal under section 106(1)(a) or (f) of the 1995 Act which brings under review an alleged miscarriage of justice,
- (b) an appeal under paragraph (b), (ba), (bb), (c), (d), (db) or (dc) of subsection (1) of section 106 of the 1995 Act which brings under review in accordance with subsection (3)(a) of that section an alleged miscarriage of justice,
- (c) an appeal under section 175(2)(a) or (d) of the 1995 Act which brings under review an alleged miscarriage of justice,
- (d) an appeal under paragraph (b), (c) or (cb) of subsection (2) of section 175 of the 1995 Act which brings under review an alleged miscarriage of justice which is based on the type of miscarriage described in subsection (5) of that section,
- (e) an appeal to the Supreme Court against a determination by the High Court of Justiciary of a devolution issue,
- (f) an appeal against conviction by bill of suspension under section 191(1) of the 1995 Act,
- (g) an appeal against conviction by bill of advocacy,
- (h) a petition to the *nobile officium* in respect of a matter arising out of criminal proceedings which brings under review an alleged miscarriage of justice which is based on the existence and significance of new evidence,
- (i) an appeal under section 62(1)(b) of the 1995 Act against a finding under section 55(2) of that Act,
- (j) the referral to the High Court of Justiciary under section 194B of the 1995 Act of—
 - (i) a conviction, or
 - (ii) a finding under section 55(2) of that Act.>

Kenny MacAskill

609 After section 96, insert—

<Duty to disclose after conclusion of proceedings at first instance

- (1) This section applies where appellate proceedings are instituted in relation to an appellant.
- (2) As soon as practicable after the relevant act the prosecutor must—
 - (a) review all information of which the prosecutor is aware that relates to the grounds of appeal in the appellate proceedings, and
 - (b) disclose to the appellant any information that falls within subsection (3).
- (3) Information falls within this subsection if it is—
 - (a) information that the prosecutor was required by virtue of section 89(2)(b) or 90(2)(b) to disclose in the earlier proceedings but did not disclose,
 - (b) information to which, during the earlier proceedings, the prosecutor considered paragraph (a) or (b) of section 89(3) did not apply but to which the prosecutor now considers one or both of those paragraphs would apply, or

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- (c) information of which the prosecutor has become aware since the disposal of the earlier proceedings that, had the prosecutor been aware of it during those proceedings, the prosecutor would have been required to disclose by virtue of section 89(2)(b) or 90(2)(b).
- (4) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the appellant.
- (5) In this section—

“earlier proceedings”, in relation to appellate proceedings, means the proceedings to which the appellate proceedings relate,

“relevant act” means—

- (a) in relation to proceedings of the type mentioned in paragraph (a) or (b) of the relevant definition, the granting under section 107(1)(a) of the 1995 Act of leave to appeal,
- (b) in relation to proceedings of the type mentioned in paragraph (c) or (d) of the relevant definition, the granting under section 180(1)(a) or, as the case may be, 187(1)(a) of that Act of leave to appeal,
- (c) in relation to proceedings of the type mentioned in paragraph (e) of the relevant definition, the granting of leave to appeal by the High Court of Justiciary or, as the case may be, the Supreme Court,
- (d) in relation to proceedings of the type mentioned in paragraph (f) of the relevant definition—
 - (i) if leave to appeal is required, the granting under section 191(2) of that Act of leave to appeal,
 - (ii) if leave to appeal is not required, service on the prosecutor under the relevant rule of a certified copy of the bill of suspension and the interlocutor granting first order for service,
- (e) in relation to proceedings of the type mentioned in paragraph (g) of the relevant definition, service on the prosecutor under the relevant rule of a certified copy of the bill of advocation and the interlocutor granting first order for service,
- (f) in relation to proceedings of the type mentioned in paragraph (h) of the relevant definition, service on the prosecutor under the relevant rule of a certified copy of the petition and the interlocutor granting first order for service,
- (g) in relation to proceedings of the type mentioned in paragraph (i) of the relevant definition, the lodging of the appeal,
- (h) in relation to proceedings of the type mentioned in paragraph (j) of the relevant definition, the lodging of the grounds of appeal by the person to whom the referral relates,

“relevant definition” means the definition of appellate proceedings in section (*Sections (Duty to disclose after conclusion of proceedings at first instance) to (Review of ruling under section (Application by appellant for ruling on disclosure))*): *interpretation*),

“relevant rule” means rule 29A.1(3) of the Criminal Procedure Rules 1996 (S.I. 1996/513).>

THIS IS NOT THE MARSHALLED LIST

Kenny MacAskill

610 After section 96, insert—

<Continuing duty of prosecutor

- (1) This section applies where the prosecutor has complied with section (*Duty to disclose after conclusion of proceedings at first instance*)(2) in relation to an appellant.
- (2) During the relevant period, the prosecutor must—
 - (a) from time to time review all information of which the prosecutor is aware that relates to the grounds of appeal in the appellate proceedings which relate to the appellant, and
 - (b) disclose to the appellant any information that falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).
- (3) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the appellant.
- (4) In subsection (2), “relevant period” means the period—
 - (a) beginning with the prosecutor’s compliance with section (*Duty to disclose after conclusion of proceedings at first instance*)(2), and
 - (b) ending with the relevant conclusion.
- (5) In subsection (4), “relevant conclusion” means—
 - (a) in relation to proceedings of the type mentioned in paragraph (a) or (b) of the relevant definition—
 - (i) the lodging under section 116(1) of the 1995 Act of a notice of abandonment, or
 - (ii) the disposal of the appeal under section 118 of that Act,
 - (b) in relation to proceedings of the type mentioned in paragraph (c) or (d) of the relevant definition—
 - (i) the disposal of the appeal under section 183(1)(b) to (d) of that Act,
 - (ii) the abandonment of the appeal under section 184(1) of that Act,
 - (iii) the setting aside of the conviction or sentence or, as the case may be, conviction and sentence under section 188(1) of that Act, or
 - (iv) the disposal of the appeal under section 190(1) of that Act,
 - (c) in relation to proceedings of the type mentioned in paragraph (e), (f), (g) or (h) of the relevant definition, the disposal or abandonment of the appeal,
 - (d) in relation to proceedings of the type mentioned in paragraph (i) of the relevant definition, the disposal of the appeal under section 62(6) of that Act or the abandonment of the appeal,
 - (e) in relation to proceedings of the type mentioned in paragraph (j) of the relevant definition—
 - (i) if the referral or finding is being treated as if it were an appeal under Part 8 of that Act, the conclusion mentioned in paragraph (a) above,

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- (ii) if the referral or finding is being treated as if it were an appeal under Part 10 of that Act, the conclusion mentioned in paragraph (b) above or, where the referral or finding proceeds by way of bill of suspension, bill of advocacy or petition to the *nobile officium*, paragraph (c) above.
- (6) In this section, “relevant definition” has the meaning given by section (*Duty to disclose after conclusion of proceedings at first instance*)(5).>

Kenny MacAskill

612 After section 96, insert—

<Further duty of prosecutor: conviction upheld on appeal

- (1) This section applies where—
 - (a) in an appeal to the High Court of Justiciary, the High Court upholds the conviction of a person, and
 - (b) after the conclusion of the appeal the prosecutor becomes aware of—
 - (i) information that the prosecutor was required by virtue of section 89(2)(b) or 90(2)(b) to disclose in the earlier proceedings but did not disclose, or
 - (ii) information that falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3) which would have related to the grounds of appeal but was not disclosed.
- (2) As soon as practicable after becoming aware of the information the prosecutor must disclose it to the person.
- (3) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the person.
- (4) Nothing in this section requires the prosecutor to carry out a review of information of which the prosecutor is aware.
- (5) In this section, “earlier proceedings” has the meaning given by section (*Duty to disclose after conclusion of proceedings at first instance*)(5).>

Kenny MacAskill

613 After section 96, insert—

<Further duty of prosecutor: convicted persons

- (1) This section applies where—
 - (a) a person has been convicted,
 - (b) after conviction the prosecutor becomes aware of information that the prosecutor was required by virtue of section 89(2)(b) or 90(2)(b) to disclose in the earlier proceedings but did not disclose, and
 - (c) section (*Further duty of prosecutor: conviction upheld on appeal*) does not apply.
- (2) As soon as practicable after becoming aware of the information the prosecutor must disclose it to the person.
- (3) If the person institutes appellate proceedings in relation to the conviction, the prosecutor need not comply with the duty imposed by subsection (2) during the appropriate period.
- (4) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the person.

THIS IS NOT THE MARSHALLED LIST

- (5) Nothing in this section requires the prosecutor to carry out a review of information of which the prosecutor is aware.
- (6) In this section—
 - “appropriate period”, in relation to appellate proceedings, means the period beginning with the relevant act and ending with the relevant conclusion,
 - “earlier proceedings” has the meaning given by section (*Duty to disclose after conclusion of proceedings at first instance*)(5),
 - “relevant act” has the meaning given by section (*Duty to disclose after conclusion of proceedings at first instance*)(5),
 - “relevant conclusion” has the meaning given by section (*Continuing duty of prosecutor*)(5).>

Kenny MacAskill

614 After section 96, insert—

<Further duty of prosecutor: appeal against acquittal

- (1) This section applies where—
 - (a) the prosecutor appeals against the acquittal of a person, and
 - (b) after lodging the appeal the prosecutor becomes aware of information which relates to the appeal and falls within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).
- (2) As soon as practicable after becoming aware of the information the prosecutor must disclose it to the person.
- (3) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the person.
- (4) The prosecutor ceases to be subject to the duty imposed by subsection (2) on the disposal of the appeal by the High Court of Justiciary.
- (5) Nothing in this section requires the prosecutor to carry out a review of information of which the prosecutor is aware.>

Means of disclosure

Kenny MacAskill

618 In section 97, page 111, line 2, at end insert—

- <(4) Subsection (5) applies if the information is contained in—
 - (a) a precognition,
 - (b) a victim statement,
 - (c) a statement given by a person whom the prosecutor does not intend to call to give evidence in the proceedings, or
 - (d) where the proceedings relating to the accused are summary proceedings, a statement given by a person whom the prosecutor intends to call to give evidence in the proceedings.

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- (5) In complying with the requirement, the prosecutor need not disclose the precognition or, as the case may be, statement.
- (6) Subsection (7) applies where the proceedings relating to the accused are solemn proceedings and—
 - (a) the information is contained in a statement given by a person whom the prosecutor intends to call to give evidence in the proceedings, or
 - (b) the information is contained in a statement and the prosecutor intends to apply under section 259 of the 1995 Act to have evidence of the statement admitted in the proceedings.
- (7) In complying with the requirement, the prosecutor must disclose the statement.>

Confidentiality of disclosed information and disclosure to third party

Kenny MacAskill

620 In section 98, page 111, line 19, at end insert—

- <(4A) If despite subsection (2) the accused discloses the information or anything recorded in it other than in accordance with subsection (3), a person to whom information is disclosed must not use or disclose the information or anything recorded in it.
- (4B) Subsections (2), (4) and (4A) do not apply in relation to the use or disclosure of information which is in the public domain at the time of the use or disclosure.>

Kenny MacAskill

621 In section 98, page 111, line 22, at end insert—

- <() a petition to the *nobile officium*,
- () proceedings in the European Court of Human Rights.>

Kenny MacAskill

622 Leave out section 100

Kenny MacAskill

623 Leave out section 101

Kenny MacAskill

692 In section 116, page 119, leave out line 30

Application to court – orders preventing or restricting disclosure

Kenny MacAskill

625 In section 102, page 112, line 31, leave out from <serious> to <prejudice> in line 34 and insert <a real risk of substantial harm or damage>

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Kenny MacAskill

- 626 In section 102, page 112, line 35, leave out from <a> to end of line 7 on page 113 and insert <an order under section 106 (a “section 106 order”).>

Kenny MacAskill

- 627 In section 103, page 113, line 10, leave out <non-disclosure> and insert <section 106>

Kenny MacAskill

- 628 In section 103, page 113, line 11, leave out <non-disclosure> and insert <section 106>

Kenny MacAskill

- 629 In section 103, page 113, line 12, after <may> insert <also>

Kenny MacAskill

- 630 In section 103, page 113, line 15, leave out <non-disclosure> and insert <section 106>

Kenny MacAskill

- 631 In section 103, page 113, line 16, after <may> insert <also>

Kenny MacAskill

- 632 In section 103, page 113, line 20, leave out <non-disclosure> and insert <section 106>

Kenny MacAskill

- 633 In section 103, page 113, line 24, after <section> insert <104 or>

Kenny MacAskill

- 634 In section 103, page 113, line 26, leave out <non-disclosure> and insert <section 106>

Kenny MacAskill

- 635 In section 103, page 113, line 31, leave out <non-disclosure> and insert <section 106>

Kenny MacAskill

- 636 In section 104, page 114, line 4, leave out <non-disclosure> and insert <section 106>

Kenny MacAskill

- 637 In section 104, page 114, line 12, leave out from <non-disclosure> to <accused> in line 16 and insert <section 106 order would be likely to cause a real risk of substantial harm or damage to the public interest>

Kenny MacAskill

- 638 In section 104, page 114, leave out lines 23 to 26 and insert—

- <(9) If after giving the prosecutor and, subject to subsection (10), the accused an opportunity to be heard, the court is satisfied that the conditions in subsection (4) of section 105 are met, the court may make an exclusion order under subsection (3) of that section.
- (10) On the application of the prosecutor the court may exclude the accused from the hearing appointed under subsection (8).>

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Kenny MacAskill

639 In section 105, page 114, line 28, after <103(2)(b)> insert <or (3)>

Kenny MacAskill

640 In section 105, page 114, line 30, at end insert—
<(2A) On the application of the prosecutor the court may exclude the accused from the hearing.>

Kenny MacAskill

641 In section 105, page 114, line 31, after <and> insert <, subject to subsection (2A),>

Kenny MacAskill

642 In section 105, page 114, line 31, after <heard> insert <on the applications for the exclusion order and the section 106 order to which it relates>

Kenny MacAskill

643 In section 105, page 114, line 36, leave out from <non-disclosure> to <accused> in line 39 and insert <section 106 order relates would be likely to cause a real risk of substantial harm or damage to the public interest>

Kenny MacAskill

644 In section 106, page 115, line 3, leave out <non-disclosure> and insert <section 106>

Kenny MacAskill

645 In section 106, page 115, line 6, leave out subsection (2) and insert—
<(2) The court must—
(a) consider the item of information to which the application for a section 106 order relates,
(b) give the prosecutor and (if the court has not made an exclusion order) the accused the opportunity to be heard, and
(c) determine—
(i) whether the conditions in subsection (3) apply, and
(ii) if so, whether subsection (4) applies.>

Kenny MacAskill

646 In section 106, page 115, line 14, leave out <89(5), 90(2)(c), 94(1)(c) or 95(3)(c)> and insert <89(2)(b), 90(2)(b), 94(1A)(b), 95(3)(b) or (*Change in circumstances following lodging of defence statement: summary proceedings*)(6)(b)>

Kenny MacAskill

647 In section 106, page 115, line 15, at end insert—
<() that section 89(3)(a) or (b) applies to the information,>

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Kenny MacAskill

- 648 In section 106, page 115, line 16, leave out from <it> to <prejudice> in line 20 and insert <there would be a real risk of substantial harm or damage>

Kenny MacAskill

- 649 In section 106, page 115, line 23, leave out <non-disclosure> and insert <section 106>

Kenny MacAskill

- 650 In section 106, page 115, line 25, leave out from beginning to <conditions> in line 27 and insert <This subsection applies if the court considers that the item of information could be disclosed or partly disclosed in such a way that—

(a) the condition>

Kenny MacAskill

- 651 In section 106, page 115, line 29, at end insert—
- <(4A) If the court considers that subsection (3) (but not subsection (4)) applies, it may make a section 106 order preventing disclosure of the information.
- (4B) If the court considers that subsection (4) applies, it may make a section 106 order requiring the information to be disclosed or partly disclosed to the accused in the manner specified in the order.>

Kenny MacAskill

- 652 In section 106, page 115, line 35, leave out subsection (6)

Kenny MacAskill

- 666 In section 111, page 116, line 35, leave out <non-disclosure> and insert <section 106>

Kenny MacAskill

- 669 In section 111, page 117, line 8, leave out <non-disclosure> and insert <section 106>

Kenny MacAskill

- 670 In section 111, page 117, line 10, leave out <non-disclosure> and insert <section 106>

Kenny MacAskill

- 671 In section 111, page 117, line 13, leave out <non-disclosure> and insert <section 106>

Kenny MacAskill

- 673 In section 111, page 117, line 19, leave out <non-disclosure> and insert <section 106>

Kenny MacAskill

- 675 In section 111, page 117, line 26, leave out <non-disclosure> and insert <section 106>

Kenny MacAskill

- 676 In section 111, page 117, line 27, leave out <non-disclosure> and insert <section 106>

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Kenny MacAskill

677 In section 111, page 117, line 29, leave out <non-disclosure> and insert <section 106>

Kenny MacAskill

678 In section 111, page 117, line 33, leave out <non-disclosure> and insert <section 106>

Kenny MacAskill

680 In section 112, page 118, line 6, leave out <non-disclosure> and insert <section 106>

Kenny MacAskill

686 In section 113, page 118, line 21, leave out <non-disclosure> and insert <section 106>

Kenny MacAskill

687 In section 113, page 118, line 30, leave out <non-disclosure> and insert <section 106>

Orders preventing or restricting disclosure - applications by Secretary of State

Kenny MacAskill

653 After section 106, insert—

<Orders preventing or restricting disclosure: Secretary of State

Order preventing or restricting disclosure: application by Secretary of State

- (1) The Secretary of State may apply to the relevant court for an order under this section (a “section (*Order preventing or restricting disclosure: application by Secretary of State*) order”) in relation to the proposed disclosure by the prosecutor to the accused in relevant criminal proceedings of information which the prosecutor—
 - (a) is required to disclose by virtue of section 89(2)(b), 90(2)(b), 94(1A)(b), 95(3)(b) or (*Change in circumstances following lodging of defence statement: summary proceedings*)(6)(b), or
 - (b) intends to disclose otherwise than by virtue of this Part.
- (2) If the Secretary of State also makes an application in accordance with subsection (2) or (3) of section (*Application for ancillary orders: Secretary of State*), the relevant court must comply with subsections (6) and (7) of that section.
- (3) Where an application is made under subsection (1), the relevant court must—
 - (a) consider the item of information to which the application relates,
 - (b) give the Secretary of State and the prosecutor the opportunity to be heard,
 - (c) if the application relates to information which the prosecutor is required to disclose by virtue of section 89(2)(b), 90(2)(b), 94(1A)(b), 95(3)(b) or (*Change in circumstances following lodging of defence statement: summary proceedings*)(6)(b) and a non-attendance order has not been made, give the accused the opportunity to be heard, and
 - (d) determine—
 - (i) whether the conditions in subsection (4) apply, and

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- (ii) if so, whether subsection (5) applies.
- (4) The conditions are—
 - (a) that if the item of information were to be disclosed there would be a real risk of substantial harm or damage to the public interest,
 - (b) that withholding the item of information would be consistent with the accused’s receiving a fair trial, and
 - (c) that the public interest would be protected only if a section (*Order preventing or restricting disclosure: application by Secretary of State*) order of the type mentioned in subsection (6) were to be made.
 - (5) This subsection applies if the court considers that the item of information could be disclosed or partly disclosed in such a way that—
 - (a) the condition in paragraph (a) of subsection (4) would not be met, and
 - (b) the disclosure (or partial disclosure) would be consistent with the accused’s receiving a fair trial.
 - (6) If the court considers that subsection (4) (but not subsection (5)) applies, it may make a section (*Order preventing or restricting disclosure: application by Secretary of State*) order preventing disclosure of the information.
 - (7) If the court considers that subsection (5) applies, it may make a section (*Order preventing or restricting disclosure: application by Secretary of State*) order requiring the information to be disclosed or partly disclosed to the accused in the manner specified in the order.
 - (8) For the purposes of subsection (7) the order may in particular specify that—
 - (a) the item of information be disclosed after removing or obscuring parts of it (whether by redaction or otherwise),
 - (b) extracts or summaries of the item of information (or part of it) be disclosed instead of the item of information.
 - (9) If an application is made under this section the relevant criminal proceedings must be adjourned until the application is disposed of or withdrawn.
 - (10) In this section and sections (*Application for ancillary orders: Secretary of State*) to (*Application for non-attendance order*)—
 - “relevant court” means the court before which relevant criminal proceedings are taking place,
 - “relevant criminal proceedings” means criminal proceedings relating to the item of information to which the application under this section relates.>

Kenny MacAskill

654 After section 106, insert—

<Application for ancillary orders: Secretary of State

- (1) This section applies where the Secretary of State applies for a section (*Order preventing or restricting disclosure: application by Secretary of State*) order.
- (2) If the application under section (*Order preventing or restricting disclosure: application by Secretary of State*) relates to solemn proceedings, the Secretary of State may also apply to the relevant court for—

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- (a) a restricted notification order and a non-attendance order, or
 - (b) a non-attendance order (but not a restricted notification order).
- (3) If the application under section (*Order preventing or restricting disclosure: application by Secretary of State*) relates to summary proceedings, the Secretary of State may also apply to the court for a non-attendance order.
- (4) A restricted notification order is an order under section (*Application for restricted notification order and non-attendance order*) prohibiting notice being given to the accused of—
- (a) the making of an application for—
 - (i) the section (*Order preventing or restricting disclosure: application by Secretary of State*) order to which the restricted notification order relates,
 - (ii) the restricted notification order, and
 - (iii) a non-attendance order, and
 - (b) the determination of those applications.
- (5) A non-attendance order is an order under section (*Application for non-attendance order*) prohibiting the accused from attending or making representations in proceedings for the determination of the application for the section (*Order preventing or restricting disclosure: application by Secretary of State*) order to which the non-attendance order relates.
- (6) Subsection (7) applies where the Secretary of State applies—
- (a) by virtue of subsection (2)(a) for a restricted notification order and a non-attendance order, or
 - (b) by virtue of subsection (2)(a) or (b) for a non-attendance order.
- (7) Before determining the application for the section (*Order preventing or restricting disclosure: application by Secretary of State*) order, the court must—
- (a) in accordance with section (*Application for restricted notification order and non-attendance order*), determine any application for a restricted notification order and a non-attendance order,
 - (b) in accordance with section (*Application for non-attendance order*), determine any application for a non-attendance order.>

Kenny MacAskill

655 After section 106, insert—

<Application for restricted notification order and non-attendance order

- (1) This section applies where by virtue of section (*Application for ancillary orders: Secretary of State*)(2)(a) the Secretary of State applies for a restricted notification order and a non-attendance order.
- (2) On receiving the application, the relevant court must appoint a hearing to determine whether a restricted notification order should be made.
- (3) The accused is not to be notified of—

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- (a) the applications for the section (*Order preventing or restricting disclosure: application by Secretary of State*) order, the restricted notification order and the non-attendance order, or
 - (b) the hearing appointed under subsection (2).
- (4) The accused is not to be given the opportunity to be heard or be represented at the hearing.
 - (5) If, after giving the Secretary of State and the prosecutor an opportunity to be heard, the court is satisfied that the conditions in subsection (6) are met, the court may make a restricted notification order.
 - (6) Those conditions are—
 - (a) that disclosure to the accused of the making of the application for the section (*Order preventing or restricting disclosure: application by Secretary of State*) order would be likely to cause a real risk of substantial harm or damage to the public interest, and
 - (b) that, having regard to all the circumstances, the making of a restricted notification order would be consistent with the accused's receiving a fair trial.
 - (7) If the court makes a restricted notification order, it must also make a non-attendance order.
 - (8) If the court refuses to make a restricted notification order, the court must appoint a hearing to determine the application for a non-attendance order.
 - (9) If after giving the Secretary of State, the prosecutor and, subject to subsection (10), the accused an opportunity to be heard, the court is satisfied that the conditions in subsection (5) of section (*Application for non-attendance order*) are met, the court may make a non-attendance order under subsection (4) of that section.
 - (10) On the application of the Secretary of State the court may exclude the accused from the hearing appointed under subsection (8).>

Kenny MacAskill

656 After section 106, insert—

<Application for non-attendance order

- (1) This section applies where by virtue of section (*Application for ancillary orders: Secretary of State*)(2)(b) the Secretary of State applies for a non-attendance order (but not a restricted notification order).
- (2) On receiving the application, the relevant court must appoint a hearing.
- (3) On the application of the Secretary of State the court may exclude the accused from the hearing.
- (4) If after giving the Secretary of State, the prosecutor and, if not excluded under subsection (3), the accused an opportunity to be heard the court is satisfied that the conditions in subsection (5) are met, the court may make a non-attendance order.
- (5) Those conditions are—
 - (a) that disclosure to the accused of the nature of the information to which the application for the section (*Order preventing or restricting disclosure: application by Secretary of State*) order relates would be likely to cause a real risk of substantial harm or damage to the public interest, and

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- (b) that, having regard to all the circumstances, the making of a non-attendance order would be consistent with the accused's receiving a fair trial.>

Kenny MacAskill

679 After section 111, insert—

<**Review of section (*Order preventing or restricting disclosure: application by Secretary of State*) order**

- (1) This section applies where—
 - (a) the court makes a section (*Order preventing or restricting disclosure: application by Secretary of State*) order, and
 - (b) during the relevant period the Secretary of State, the prosecutor, special counsel or the accused becomes aware of information that was unavailable to the court at the time when the order was made.
- (2) The Secretary of State or, as the case may be, the prosecutor, special counsel or the accused may apply to the court to review the order.
- (3) Except in the case mentioned in subsection (4), the same persons are entitled to be heard on the application for review as were entitled to be heard on the application for the order.
- (4) If—
 - (a) a restricted notification order was granted in relation to the order which is under review, and
 - (b) the court is satisfied that the conditions in section (*Application for restricted notification order and non-attendance order*)(6) are met,the court may, where the Secretary of State or, as the case may be, the prosecutor or special counsel applies for the review, make an order prohibiting notification of the application for review being given to the accused.
- (5) If—
 - (a) a non-attendance order was granted in relation to the order which is under review, and
 - (b) the court is satisfied that the conditions in section (*Application for non-attendance order*)(5) are met,the court may, where the Secretary of State or, as the case may be, the prosecutor, special counsel or the accused applies for the review, exclude the accused from the review.
- (6) If the court is not satisfied that the conditions mentioned in section (*Order preventing or restricting disclosure: application by Secretary of State*)(4) are met, the court may—
 - (a) recall the order which is under review, or
 - (b) recall the order which is under review and make an order requiring the information to be disclosed or partly disclosed to the accused in the specified manner.

(7) Nothing in this section affects any right of appeal in relation to the order which is under review.

(8) In this section—

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“specified” means specified in the order of the court,

“the relevant period”, in relation to an accused, means the period—

- (a) beginning with the making of the section (*Order preventing or restricting disclosure: application by Secretary of State*) order, and
- (b) ending with the conclusion of the proceedings against the accused.>

Kenny MacAskill

- 681 In section 112, page 118, line 6, after <order> insert <or a section (*Order preventing or restricting disclosure: application by Secretary of State*) order>

Kenny MacAskill

- 682 In section 112, page 118, line 7, after <consider> insert <in relation to each order>

Kenny MacAskill

- 683 In section 112, page 118, line 8, leave out <non-disclosure order> and insert <order concerned>

Kenny MacAskill

- 684 In section 112, page 118, line 10, leave out <non-disclosure order> and insert <order concerned>

Kenny MacAskill

- 685 In section 112, page 118, line 12, leave out <90(4)> and insert <111(8)>

Disclosure – appointment of special counsel

Kenny MacAskill

- 657 In section 107, page 116, leave out lines 6 and 7 and insert—
- <() an application for an exclusion order,
 - () an application for a section 106 order,
 - () an application for a restricted notification order,
 - () an application for a non-attendance order,
 - () an application for a section (*Order preventing or restricting disclosure: application by Secretary of State*) order,>

Kenny MacAskill

- 658 In section 107, page 116, line 11, leave out <to whom the application, review or appeal relates> and insert <in relation to the determination of the application, review or appeal>

Kenny MacAskill

- 659 In section 107, page 116, line 14, at end insert—
- <() Before deciding whether to appoint special counsel in a non-notification case, the court—
 - (a) must give the prosecutor an opportunity to be heard, but

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- (b) must not give the accused an opportunity to be heard.
- () Before deciding whether to appoint special counsel in a restricted notification case, the court—
 - (a) must give the prosecutor and the Secretary of State an opportunity to be heard,
 - (b) must not give the accused an opportunity to be heard.
- () Before deciding whether to appoint special counsel in any case other than a non-notification case or a restricted notification case, the court must give all the parties an opportunity to be heard.
- () The prosecutor may appeal to the High Court against a decision of the court not to appoint special counsel in any case.
- () The Secretary of State may appeal to the High Court against a decision of the court not to appoint special counsel in a restricted notification case.
- () The accused may appeal to the High Court against a decision not to appoint special counsel in any case other than a non-notification case or a restricted notification case.
- () In this section and section (*Role of special counsel*)—
 - “non-notification case” means a case where the court is determining—
 - (a) an application for a non-notification order,
 - (b) an application for review of the grant or refusal of a non-notification order,
 - (c) an appeal relating to such an order,
 - “restricted notification case” means a case where the court is determining—
 - (a) an application for a restricted notification order,
 - (b) an application for review of the grant or refusal of a restricted notification order,
 - (c) an appeal relating to such an order.>

Kenny MacAskill

660 After section 107, insert—

<Persons eligible for appointment as special counsel

The court may appoint a person as special counsel under section 107(2) only if the person is a solicitor or advocate.>

Kenny MacAskill

661 After section 107, insert—

<Role of special counsel

- (1) Special counsel’s duty is, in relation to the determination of the relevant application or appeal, to act in the best interests of the accused with a view only to ensuring that the accused receives a fair trial.
- (2) Special counsel—
 - (a) is entitled to see the confidential information, but
 - (b) must not disclose any of the confidential information to the accused or the accused’s representative (if any).

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- (3) Special counsel appointed in a non-notification case or a restricted notification case must not—
 - (a) disclose to the accused or the accused’s representative (if any) the making of the relevant application or appeal, or
 - (b) otherwise communicate with the accused or the accused’s representative (if any) about the relevant application or appeal.
- (4) Special counsel appointed in any case other than a non-notification case or a restricted notification case must not communicate with the accused about the relevant application or appeal except—
 - (a) with the permission of the court, and
 - (b) where permission is given, in accordance with such conditions as the court may impose.
- (5) Before deciding whether to grant permission, the court must give—
 - (a) the prosecutor, and
 - (b) in the case of an application for a section (*Order preventing or restricting disclosure: application by Secretary of State*) order or a non-attendance order, the Secretary of State,an opportunity to be heard.
- (6) In this section—

“the confidential information” means—

 - (a) the information to which the relevant application or appeal relates, and
 - (b) a copy of the relevant application or appeal,

“relevant application or appeal” means the application or appeal referred to in section 107(1) in respect of which special counsel is appointed.>

Kenny MacAskill

668 In section 111, page 117, line 7, after <be,> insert <special counsel or>

Kenny MacAskill

672 In section 111, page 117, line 16, after <prosecutor> insert <or, as the case may be, special counsel>

Kenny MacAskill

674 In section 111, page 117, line 22, after <prosecutor> insert <or, as the case may be, special counsel>

Appeals against disclosure orders etc.

Kenny MacAskill

662 After section 107, insert—

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<Appeals

- (1) The prosecutor may appeal to the High Court against—
 - (a) the making of a section 106 order under section 106(4B),
 - (b) the making of a section (*Order preventing or restricting disclosure: application by Secretary of State*) order,
 - (c) the making of a restricted notification order,
 - (d) the making of a non-attendance order,
 - (e) the refusal of an application for a non-notification order,
 - (f) the refusal of an application for an exclusion order, or
 - (g) the refusal of an application for a section 106 order.
- (2) The accused may appeal to the High Court against the making of—
 - (a) an exclusion order under section 105(3),
 - (b) a section 106 order,
 - (c) a section (*Order preventing or restricting disclosure: application by Secretary of State*) order, or
 - (d) a non-attendance order.
- (3) The Secretary of State may appeal to the High Court against—
 - (a) the making of a section (*Order preventing or restricting disclosure: application by Secretary of State*) order under section (*Order preventing or restricting disclosure: application by Secretary of State*)(7),
 - (b) the refusal of an application for a restricted notification order,
 - (c) the refusal of an application for a non-attendance order, or
 - (d) the refusal of an application for a section (*Order preventing or restricting disclosure: application by Secretary of State*) order.
- (4) If special counsel was appointed in relation to an application for a non-notification order, special counsel may appeal to the High Court against the making of—
 - (a) the non-notification order, or
 - (b) a section 106 order in relation to the same item of information.
- (5) If special counsel was appointed in relation to an application for a restricted notification order, special counsel may appeal to the High Court against the making of—
 - (a) the restricted notification order, or
 - (b) a section (*Order preventing or restricting disclosure: application by Secretary of State*) order in relation to the same item of information.
- (6) An appeal must be lodged not later than 7 days after the decision appealed against.
- (7) The prosecutor is entitled to be heard in any appeal under this section.
- (8) The accused is entitled to be heard in an appeal under—
 - (a) subsection (1)(a) or (g) or (2)(b) unless—
 - (i) a non-notification order has been made, or
 - (ii) an exclusion order has been made,

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- (b) subsection (1)(b), (2)(c) or (3)(a) or (d) unless—
 - (i) a restricted notification order has been made, or
 - (ii) a non-attendance order has been made,
 - (c) subsection (1)(d), (2)(d) or (3)(c) unless the court, on the application of the Secretary of State, excludes the accused from the hearing,
 - (d) subsection (1)(f) or (2)(a) unless the court, on the application of the prosecutor excludes the accused from the hearing.
- (9) The Secretary of State is entitled to be heard in an appeal under subsection (1)(b), (c) or (d), (2)(c) or (d) or (5).>

Kenny MacAskill

663 Leave out section 108

Kenny MacAskill

664 Leave out section 109

Kenny MacAskill

665 Leave out section 110

Kenny MacAskill

667 In section 111, page 117, line 3, leave out from <, and> to end of line 6

Abolition of common law rules on disclosure

Kenny MacAskill

688 After section 115, insert—

<Abolition of common law rules about disclosure

- (1) The provisions of this Part replace any equivalent common law rules about disclosure of information by the prosecutor in connection with criminal proceedings.
- (2) The common law rules about disclosure of information by the prosecutor in connection with criminal proceedings are abolished in so far as they are replaced by or are inconsistent with the provisions of this Part.
- (3) Sections (*Application by accused for ruling on disclosure*) and (*Application by appellant for ruling on disclosure*) do not affect any right under the common law of an accused or appellant to seek disclosure or recovery of information by or from the prosecutor by means of a procedure other than an application under one or other of those sections.
- (4) Subsection (5) applies where, following an application (the “earlier disclosure application”) by the accused or the appellant under section (*Application by accused for ruling on disclosure*) or section (*Application by appellant for ruling on disclosure*), the court has made a ruling that (as the case may be)—
 - (a) section 89(3) does not apply to information, or
 - (b) information does not fall within section (*Duty to disclose after conclusion of proceedings at first instance*)(3).

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- (5) The accused or, as the case may be, the appellant, is not entitled to seek the disclosure or recovery of the same information by or from the prosecutor by means of any other procedure at common law on grounds that are substantially the same as any of those on which the earlier disclosure application was made.
- (6) Subsection (7) applies where, following an application (the “earlier common law application”) by the accused under a procedure other than an application under section (*Application by accused for ruling on disclosure*) or (*Application by appellant for ruling on disclosure*), the court has decided not to make an order for the recovery or disclosure of information by or from the prosecutor.
- (7) The accused or, as the case may be, the appellant is not entitled to make an application under section (*Application by accused for ruling on disclosure*) or (*Application by appellant for ruling on disclosure*) in relation to the same information on grounds that are substantially the same as any of those on which the earlier common law application was made.
- (8) In this section, “appellant” has the meaning given by section (*Sections (Duty to disclose after conclusion of proceedings at first instance) to (Review of ruling under section (Application by appellant for ruling on disclosure)): interpretation*).>

Mental disorder and unfitness for trial

Angela Constance

- 24 In section 117, page 120, line 10, at end insert <, or
(b) to determine or control that conduct despite being able to appreciate the nature or wrongfulness of it.>

Kenny MacAskill

- 167 In section 117, page 120, line 31, leave out <it> and insert <such abnormality>

Kenny MacAskill

- 195 In schedule 5, page 157, line 10, leave out paragraph 44 and insert—
- <(1) The Crime and Punishment (Scotland) Act 1997 is amended as follows.
 - (2) In section 9 (power to specify hospital unit), in subsection (1)(a), for “insane” substitute “found not criminally responsible or unfit for trial”.
 - (3) In section 13 (increase in sentences available to sheriff and district courts), subsection (2) is repealed.
 - (4) In section 56 (powers of the court on remand or committal of children and young persons), subsection (3) is repealed.>

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

Kenny MacAskill

- 168 In section 121, page 123, leave out lines 2 and 3 and insert—

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<(3A) No order may be made under subsection (1) unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.>

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

Kenny MacAskill

169 In section 122, page 125, line 1, leave out from <5,> to <29> in line 2 and insert <5 and 11>

Licensing of metal dealers

Robert Brown

385 Leave out section 123

Licensing of street trading – food hygiene certificates

Kenny MacAskill

170 After section 124, insert—

<Licensing of street trading: food hygiene certificates

- (1) Section 39 of the 1982 Act (street traders’ licences) is amended as follows.
- (2) In subsection (4), for the words from “the requirements” to the end substitute “such requirements as the Scottish Ministers may by order made by statutory instrument specify”.
- (3) After subsection (4), insert—
 - “(5) An order under subsection (4) may specify requirements by reference to provision contained in another enactment.
 - (6) A statutory instrument containing an order made under subsection (4) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.>

Licensing of market operators

Kenny MacAskill

171 In section 125, page 128, line 24, at beginning insert <In>

Kenny MacAskill

172 In section 125, page 128, line 24, leave out from <is> to <In> in line 26 and insert <, in>

Cathie Craigie

2 In section 125, page 128, line 25, leave out subsection (2)

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Cathie Craigie

- 3** In section 125, page 128, line 26, leave out subsection (3)

Cathie Craigie

Supported by: Robert Brown

- 4** Leave out section 125