

# Criminal Justice and Licensing (Scotland) Bill

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## 2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 3	Schedule 1
Sections 4 to 18	Schedule 2
Sections 19 to 66	Schedule 3
Sections 67 to 139	Schedule 4
Sections 140 to 145	Schedule 5
Sections 146 to 148	Long Title

Amendments marked \* are new (including manuscript amendments) or have been altered.

### Section 5

#### **Kenny MacAskill**

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

#### **Bill Butler**

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

#### **Robert Brown**

**Supported by: Kenny MacAskill**

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

#### **Bill Butler**

- 18 In section 5, page 3, line 32, at end insert—

<(7A) The Lord Justice General, on receipt of guidelines prepared under subsection (1), must—

- 5 (a) refer the guidelines to such other Lords Commissioner of Justiciary as the Lord Justice General considers appropriate, inviting their comments,
- (b) having taken account of any comments made by virtue of paragraph (a), either—
- (i) approve the guidelines, or
- (ii) refer the guidelines back to the Council for further consideration, giving reasons for so doing.
- 10 (7B) Where the Lord Justice General approves guidelines under subsection (7A)(b)(i), the Council must publish them.

15 (7C) Where guidelines are referred back to the Council under subsection (7A)(b)(ii), the Council must review the guidelines and, taking account of the reasons given for the reference, prepare revised guidelines for the approval of the Lord Justice General; and subsection (7A) applies to revised guidelines prepared under this subsection as it applies to guidelines prepared under subsection (1).>

**Robert Brown**

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

**Robert Brown**

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

**Robert Brown**

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

**Kenny MacAskill**

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

**Bill Butler**

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

**Kenny MacAskill**

59 In section 5, page 3, line 36, leave out subsection (9) and insert—  
<( ) In this section and sections 6 to 13, references to sentencing guidelines include references to revised sentencing guidelines.>

**Robert Brown**

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

**Section 6**

**Bill Butler**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Robert Brown**

- 64 In section 6, page 4, line 5, at end insert—  
<( ) the Lord Justice General (who may, in turn, consult other Lords Commissioner of Justiciary),>

**Bill Butler**

- 21 In section 6, page 4, line 7, at end insert—  
<( ) any committee of the Scottish Parliament for the time being established under the Parliament's standing orders with a remit that includes the criminal justice system,>

**Angela Constance**

- 395 In section 6, page 4, line 7, at end insert—  
<( ) persons aged under 18 who have been victims of offences relevant to the proposed guidelines, and bodies providing support to such persons.>

**Angela Constance**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Bill Butler**

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

**Kenny MacAskill**

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

## After section 6

### Kenny MacAskill

68 After section 6, insert—

#### <Approval of sentencing guidelines by High Court

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

## Section 7

### Kenny MacAskill

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

## Section 8

### Angela Constance

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

### Kenny MacAskill

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

### Bill Butler

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

## Section 9

### Kenny MacAskill

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

## After section 9

### Kenny MacAskill

- 72 After section 9, insert—
- <Publication of High Court guideline judgments**
- (1) The Council must publish the opinions of the High Court of Justiciary pronounced under section 118(7) or 189(7) of the 1995 Act.
  - (2) As soon as possible after the High Court pronounces such an opinion, the Scottish Court Service must provide the Council with a copy of the opinion.
  - (3) The copy opinion is to be provided in such form and by such means as the Council may require.

- (4) The opinions are to be published in such manner, and at such times, as the Council considers appropriate.
- (5) This section does not affect any power or responsibility of the Scottish Court Service in relation to the publication of opinions of the High Court.>

### **Section 11**

#### **Robert Brown**

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

### **Section 12**

#### **Robert Brown**

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

### **Section 13**

#### **Kenny MacAskill**

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

#### **Kenny MacAskill**

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

### **Section 14**

#### **Kenny MacAskill**

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

#### **Robert Brown**

- 77 In section 14, page 8, line 8, at end insert—  
<( ) The purpose of a community payback order is to punish an offender in a way that—  
(a) helps to pay back to the community adversely affected by the conduct of the offender, and  
(b) supports the offender in addressing the behaviour or circumstances that have contributed to that conduct.>

**Robert Brown**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

201 In section 14, page 8, line 17, at end insert—  
<( ) a conduct requirement.>

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

204 In section 14, page 8, line 25, leave out from second <or> to end of line 26 and insert—  
<( ) a conduct requirement.>

**Robert Brown**

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

**Kenny MacAskill**

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

**Robert Brown**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

207 In section 14, page 8, line 31, at end insert—  
<( ) a conduct requirement.>

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

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

**Kenny MacAskill**

214 In section 14, page 9, line 14, at end insert—

- <( ) Subsection (2) does not apply where the court is considering imposing a community payback order—
  - (a) imposing only a level 1 unpaid work or other activity requirement, or
  - (b) under section 227M(2).>

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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



**Kenny MacAskill**

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

**Kenny MacAskill**

219 In section 14, page 10, line 7, leave out from <and> to end of line 10 and insert—

- <( ) require the offender to report to the responsible officer in accordance with instructions given by that officer,
- ( ) require the offender to notify the responsible officer without delay of—
  - (i) any change of the offender’s address, and
  - (ii) the times, if any, at which the offender usually works (or carries out voluntary work) or attends school or any other educational establishment, and
- ( ) where the order imposes an unpaid work or other activity requirement, require the offender to undertake for the number of hours specified in the requirement such work or activity as the responsible officer may instruct, and at such times as may be so instructed.>

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

- 233 In section 14, page 11, line 39, at end insert—

**<Payment of offenders’ travelling and other expenses**

- (1) The Scottish Ministers may by order made by statutory instrument provide for the payment to offenders of travelling or other expenses in connection with their compliance with requirements imposed on them by community payback orders.
- (2) An order under subsection (1) may—
  - (a) specify expenses or provide for them to be determined under the order,
  - (b) provide for the payments to be made by or on behalf of local authorities,
  - (c) make different provision for different purposes.
- (3) An order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.>

**Robert Brown**

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

**Robert Brown**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

- 236 In section 14, page 12, leave out lines 19 and 20 and insert—  
<( ) a conduct requirement.>

**Robert Brown**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Robert Brown**

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

**Kenny MacAskill**

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

**227H Compensation requirement**

- (1) In this Act, a “compensation requirement” is, in relation to an offender, a requirement that the offender must pay compensation for any relevant matter in favour of a relevant person.  
(2) In subsection (1)—

“relevant matter” means any personal injury, loss, damage or other matter in respect of which a compensation order could be made against the offender under section 249 of this Act, and

“relevant person” means a person in whose favour the compensation could be awarded by such a compensation order.

- (3) A compensation requirement may require the compensation to be paid in a lump sum or in instalments.
- (4) The offender must complete payment of the compensation before the earlier of the following—
  - (a) the end of the period of 18 months beginning with the day on which the compensation requirement is imposed,
  - (b) the beginning of the period of 2 months ending with the day on which the supervision requirement imposed under section 227G(2) ends.
- (5) The following provisions of this Act apply in relation to a compensation requirement as they apply in relation to a compensation order, and as if the references in them to a compensation order included a compensation requirement—
  - (a) section 249(3), (4), (5) and (8) to (10),
  - (b) section 250(2),
  - (c) section 251(1), (1A) and (2)(b), and
  - (d) section 253.>

**Robert Brown**

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

**Robert Brown**

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

**Robert Brown**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Angela Constance**

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

**Kenny MacAskill**

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

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

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

**Kenny MacAskill**

- 243 In section 14, page 13, line 33, at end insert—

<( ) Subsection (2) does not apply where the court is considering imposing a community payback order—  
(a) imposing only a level 1 unpaid work or other activity requirement, or  
(b) under section 227M(2).>

**Kenny MacAskill**

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

**Kenny MacAskill**

- 245 In section 14, page 14, leave out line 9 and insert—

<( ) any other activity to be undertaken.>

**Kenny MacAskill**

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

**Kenny MacAskill**

- 247 In section 14, page 14, line 14, leave out from <amend> to <a> in line 16 and insert—

<(a) substitute another percentage for the percentage for the time being specified in subsection (2)(a),  
(b) substitute another number of hours for the number of hours for the time being specified in subsection (2)(b).>

- ( ) An order is not to be made under subsection (3) unless a draft of the statutory instrument containing the order has been laid before and approved by>

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

267 In section 14, page 16, line 14, at end insert—

<( ) Rules under subsection (1) may—  
(a) confer functions on responsible officers,

- (b) contain rules about the way responsible officers are to exercise functions under this Act.>

**Robert Brown**

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

**Robert Brown**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Robert Brown**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Robert Brown**

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

**Kenny MacAskill**

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

**Robert Brown**

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



**Kenny MacAskill**

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

*<Conduct requirement*

**227VA Conduct requirement**

- (1) In this Act, a “conduct requirement” is, in relation to an offender, a requirement that the offender must, during the specified period, do or refrain from doing specified things.
- (2) A court may impose a conduct requirement on an offender only if the court is satisfied that the requirement is necessary with a view to—
  - (a) securing or promoting good behaviour by the offender, or
  - (b) preventing further offending by the offender.
- (3) The specified period must be not more than 3 years.
- (4) The specified things must not include anything that—
  - (a) could be required by imposing one of the other requirements listed in section 227A(2), or
  - (b) would be inconsistent with the provisions of this Act relating to such other requirements.
- (5) In this section, “specified”, in relation to a conduct requirement, means specified in the requirement.>

**Robert Brown**

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

*<Community payback orders: commencement and standards*

**227VB Commencement of community payback orders**

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

**227VC Standards with which community payback orders must comply**

- (1) The Scottish Ministers may, by regulations made by statutory instrument, specify standards with which community payback orders must comply.
- (2) Standards specified under subsection (1) must aim to ensure that community payback orders (and any requirements imposed by them) are—

- (a) capable of being delivered promptly,
  - (b) effective,
  - (c) proportionate to the nature of the offence and the circumstances of the offender, and
  - (d) consistent with the purposes and principles of sentencing.
- (3) Regulations under subsection (1) are subject to annulment in pursuance of a resolution of the Scottish Parliament.>

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

279 In section 14, page 21, line 33, at end insert—

<(8A) Subsections (8B) and (8C) apply where, in the course of carrying out a progress review in respect of a community payback order, it appears to the court that the offender has failed to comply with a requirement imposed by the order.

(8B) The court must—

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

(8C) The court must then—

- (a) if it is the appropriate court, appoint another hearing for consideration of the alleged failure in accordance with section 227ZB, or
- (b) if it is not the appropriate court, refer the alleged failure to that court for consideration in accordance with that section.>

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

- 283 In section 14, page 22, line 9, at end insert—  
<( ) Subsection (2) does not apply where the court is considering varying the order under section 227ZB(5)(c).>

**Kenny MacAskill**

- 284 In section 14, page 22, line 13, at end insert—  
<( ) include provision for progress reviews under section 227W,  
( ) where the order already includes such provision, vary that provision.>

**Kenny MacAskill**

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

**Robert Brown**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

- 289 In section 14, page 22, line 26, leave out from <maximum> to end of line 27 and insert <appropriate maximum.  
( ) The appropriate maximum is the number of hours specified in section 227I(3)(b) at the time the unpaid work or other activity requirement being varied was imposed less the aggregate of the number of hours of unpaid work or other activity still to be completed under each other unpaid work or other activity requirement (if any) in effect in respect of the offender at the time of the variation (a “current requirement”).

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

**Kenny MacAskill**

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

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

296 In section 14, page 23, line 7, leave out from <such> to end of line 8 and insert <information about the offender and the offender's circumstances.

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

**Kenny MacAskill**

297 In section 14, page 23, line 8, at end insert—

- <( ) Subsection (2) does not apply where the court is considering varying a community payback order—

- (a) which imposes only a level 1 unpaid work or other activity requirement,  
or
- (b) imposed under section 227M(2).>

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

- 303** In section 14, page 23, line 36, at end insert—
- <( ) Subsection (6)(a) does not prevent the imposition of a restricted movement requirement under section 227ZB(5)(c).
  - ( ) In determining for the purpose of subsection (6)(a) whether an unpaid work or other activity requirement is a requirement that could have been imposed by the order when the order was imposed, the effect of section 227N(6) is to be ignored.>

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

- 306** In section 14, page 23, line 40, at end insert—
- <( ) Subsections (4) and (5) of section 227E apply, with the necessary modifications, where a community payback order is varied as they apply where such an order is imposed.>

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

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

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

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

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

(i) where the court is a justice of the peace court, 60 days,

(ii) in any other case, 3 months,

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

(i) where the court is a justice of the peace court, 60 days,

(ii) in any other case, 3 months,>

**Kenny MacAskill**

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

**Kenny MacAskill**

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

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

**Kenny MacAskill**

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

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

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

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

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

**Kenny MacAskill**

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

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

**Kenny MacAskill**

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

**Robert Brown**

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

**Robert Brown**

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

**Kenny MacAskill**

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

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

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

**Kenny MacAskill**

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

**Robert Brown**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

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

**Kenny MacAskill**

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

**Robert Brown**

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

**Kenny MacAskill**

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



**Kenny MacAskill**

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

**Kenny MacAskill**

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

<( ) In subsection (3), “other relevant requirement or order” means—

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

<(4A) The period specified under subsection (4)(b) must be—

- (a) not less than 14 days, and
- (b) subject to subsections (4B) and (4C), not more than 12 months.

(4B) Subsection (4C) applies in the case of a restricted movement requirement imposed for failure to comply with a requirement of a community payback order—

- (a) where the offender was under 18 years of age at the time the order was imposed, or
- (b) where the only requirement imposed by the order is a level 1 unpaid work or other activity requirement.

(4C) The period specified under subsection (4)(b) must be not more than—

- (a) where the order was imposed by a justice of the peace court, 60 days, or
- (b) in any other case, 3 months.>

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Robert Brown**

98 In section 14, page 29, line 3, after <consult> insert—

- <(a) persons or organisations representing victims of crime,
- (b) community councils established in their area, and
- (c)>

**Kenny MacAskill**

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

**Robert Brown**

99 In section 14, page 29, line 11, at end insert—

*<Annual reports on community payback orders*

**227ZJA Annual reports on community payback orders**

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

- (b) in relation to programmes under section 227P—
  - (i) the number of offenders participating in the programmes,
  - (ii) the number and nature of those programmes,
  - (iii) the cost of providing those programmes.
- (3) The Scottish Ministers must, as soon as practicable after the end of each reporting year, lay before the Scottish Parliament and publish a report on the operation of community payback orders during that reporting year.
- (4) A report under subsection (3) must—
  - (a) collate and summarise the data included in the various reports under subsection (1),
  - (b) provide an assessment of the overall costs and effectiveness of community payback orders.
- (5) In this section, “reporting year” means—
  - (a) the period of 12 months beginning on the day this section comes into force, or
  - (b) any subsequent period of 12 months beginning on an anniversary of that day.>

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

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

**After schedule 1**

**Kenny MacAskill**

**343** After schedule 1, insert—

<SCHEDULE  
(introduced by section 14(2))

COMMUNITY PAYBACK ORDERS: CONSEQUENTIAL MODIFICATIONS

**PART 1**

THE 1995 ACT

*The 1995 Act*

1 The 1995 Act is amended as follows.

- 2 In section 52H(3) (early termination of assessment order), the following are repealed—
- (a) the word “or” immediately following paragraph (e), and
  - (b) paragraph (f).
- 3 In section 52R(3) (termination of treatment order), the following are repealed—
- (a) the word “or” immediately following paragraph (e), and
  - (b) paragraph (f).
- 4 In section 53(12)(a) (interim compulsion orders), for sub-paragraphs (vi) and (vii) substitute—
- “(vi) impose a community payback order;
  - (vii) make a drug treatment and testing order; or
  - (viii) make a restriction of liberty order.”.
- 5 In section 57A(15)(a) (compulsion order), for sub-paragraphs (vi) and (vii) substitute—
- “(vi) impose a community payback order;
  - (vii) make a drug treatment and testing order; or
  - (viii) make a restriction of liberty order.”.
- 6 In section 58(8) (order for hospital admission or guardianship), for “make a probation order or a community service order” substitute “impose a community payback order or make a drug treatment and testing order”.
- 7 In section 106(1) (right of appeal), for paragraph (d) substitute—
- “(d) against any drug treatment and testing order;”.
- 8 In section 108 (Lord Advocate’s right of appeal against disposal)—
- (a) in subsection (1), paragraphs (d) and (e) are repealed, and
  - (b) in subsection (2)(b)(iii), for “(d) to (e)” substitute “(dd)”.
- 9 In section 121A(4) (suspension of certain sentences pending determination of appeal), for paragraphs (a) to (c) substitute—
- “(aa) a community payback order;”.
- 10 In section 175 (right of appeal)—
- (a) in subsection (2)(c), for “probation order, drug treatment and testing order or any community service order” substitute “drug treatment and testing order”,
  - (b) in subsection (4), paragraphs (d) and (e) are repealed, and
  - (c) in subsection (4A)(b)(iii), for “(d) to (e)” substitute “(dd)”.
- 11 In section 193A(4) (suspension of certain sentences pending determination of appeal)—
- (a) for paragraphs (a) to (c) substitute—
    - “(aa) a community payback order;”, and
  - (b) paragraph (e) is repealed.
- 12 Sections 228 to 234 (probation) are repealed.
- 13 In section 234H (disposal on revocation of drug treatment and testing order)—
- (a) in subsection (1), for “drugs” substitute “drug”, and

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

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

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

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

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

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

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

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

“appropriate court”

“community service order”

“probationer”

“probation order”

“probation period”, and

(b) subsection (3) is repealed.

24 Schedules 6 and 7 are repealed.

## PART 2

### OTHER ENACTMENTS

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

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

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

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

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

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

#### *The Rehabilitation of Offenders Act 1974 (c.53)*

26 (1) The Rehabilitation of Offenders Act 1974 is amended as follows.

(2) In section 5(4A) (rehabilitation periods for particular sentences), the words “a probation order or” are repealed.

(3) In section 6(3) (the rehabilitation period applicable to a conviction), the following are repealed—

(a) the words “or a probation order was made”,

(b) the words “or a breach of the order”, and



- (c) the words “or probation order”.

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

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

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

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

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

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

*The Road Traffic Offenders Act 1988 (c.53)*

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

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

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

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

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

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

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

*The Crime and Disorder Act 1998 (c.37)*

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

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

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

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

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

*The Social Security Fraud Act 2001 (c.11)*

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

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

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

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

- 39 (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.
- (2) In section 42 (drugs courts)—
    - (a) in subsection (4)—
      - (i) for “probationer with the requirements of a probation order” substitute “community payback order”,

- (ii) in paragraph (b), for the words from “make” to “work” substitute “in the case of a failure to comply with the requirements of a drug treatment and testing order, make a community payback order imposing a level 1 unpaid work or other activity requirement, so however that the total hours of unpaid work or other activity”, and
  - (iii) for “probation order” where those words second occur substitute “community payback order”,
- (b) in subsection (6), for paragraph (b) substitute—
- “(b) alleged at—
- (i) a progress review carried out by such a court in relation to a community payback order; or
  - (ii) a diet of such a court to which an offender has been cited under section 227ZB(2) of that Act (breach of community payback order),
- that the offender has failed to comply with a requirement imposed by a community payback order.”,
- (c) in subsection (7)—
- (i) the words “or probationer” are repealed, and
  - (ii) for “232” substitute “227ZB”,
- (d) for subsection (9) substitute—
- “(9) If a community payback order is revoked under section 227ZB(5)(b) of the 1995 Act, the court (whether or not a drugs court) must, in dealing with the offender by virtue of that section, take into account any sentence which has been imposed under paragraph (a) of subsection (4) of this section in relation to a failure to comply with the community payback order.”,
- (e) in subsection (10)—
- (i) insert at the appropriate places—
    - ““community payback order” means an order imposed under section 227A of the 1995 Act;”
    - ““level 1 unpaid work or other activity requirement” has the meaning given in section 227I(4) of the 1995 Act;”, and
  - (ii) the definition of “probation order” is repealed, and
- (f) in subsection (11), paragraphs (a) and (b) are repealed.
- (3) Section 46 (requirement for remote monitoring in probation order) is repealed.
- (4) In section 50 (amendments in relation to certain non-custodial sentences), subsections (1), (2) and (4) are repealed.
- (5) In section 60 (unified citation provisions)—
- (a) in subsection (1), paragraphs (a), (b), (e) and (f) are repealed, and
  - (b) subsections (3) and (4) are repealed.

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

*The Criminal Justice Act 2003 (c.44)*

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

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

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

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

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

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

- 44 In the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, the following provisions are repealed—
- (a) in section 49 (compensation orders), subsection (4),
  - (b) section 57 (probation and community service orders), and
  - (c) in paragraph 26 of the schedule (modification of enactments), sub-paragraphs (l) and (n).

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

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

## Section 15

### Rhoda Grant

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

### Rhoda Grant

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

### Rhoda Grant

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

### Rhoda Grant

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

### Rhoda Grant

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

### Rhoda Grant

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

## Section 17

### Robert Brown

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

**Robert Brown**

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

**Robert Brown**

**388** In section 17, page 31, line 7, at end insert—

- <(4) The Scottish Ministers may not bring subsection (1), (2) or (3) into force until they have—
- (a) prepared a report setting out—
    - (i) the reduction in the number of sentences of imprisonment or detention imposed annually that is expected as a result of bringing those subsections into force,
    - (ii) the increase in the number of community payback orders imposed annually that is expected as a result of bringing those subsections into force (by comparison with the number of such orders imposed annually that would be expected if those subsections were not brought into force),
    - (iii) the estimated annual cost implications of the changes referred to in sub-paragraphs (i) and (ii),
    - (iv) the additional funding, if any, that Ministers will provide to community justice authorities or local authorities to ensure that they have the capacity to support the requirements expected to be imposed by any additional community payback orders identified under sub-paragraph (ii).
  - (b) laid that report before the Scottish Parliament; and
  - (c) taken into account any views expressed on it by any committee of the Parliament the remit of which includes the criminal justice system.>

**Richard Baker**

**Supported by: Bill Aitken**

**1** Leave out section 17

**After section 17**

**Robert Brown**

**102** After section 17, insert—

**<Report on operation of sections 14 and 17**

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

## After section 20

### Bill Wilson

103 After section 20, insert—

#### <Pre-sentencing reports about organisations

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

#### “203A Reports about organisations

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

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

## **Section 24**

**Robert Brown**  
**Supported by: Bill Aitken**

**104** Leave out section 24

## **After section 24**

**Kenny MacAskill**

**105** After section 24, insert—

### **<Mutual recognition of judgments and probation decisions**

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

**Richard Baker**

**10** After section 24, insert—

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

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

**5** “(5A) Subsection (5B) applies where—

- (a) a person is convicted of an offence under subsection (1),



(b) the offence was committed after the commencement of this subsection,  
and

(c) when the offence was committed, the person was aged 16 or over.

10 (5B) Where this subsection applies, the court must impose a sentence of  
imprisonment of at least 6 months (with or without a fine) unless the court is of  
the opinion that there are exceptional circumstances relating to the offence or  
to the offender which justify not doing so.”

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

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

### **Bill Aitken**

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

## **Section 25**

### **Kenny MacAskill**

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

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

(a) agrees to do something (whether or not the doing of that thing would itself  
constitute an offence), and

(b) knows or suspects, or ought reasonably to have known or suspected, that the doing  
of that thing will enable or further the commission of serious organised crime.>

### **Robert Brown**

**345** In section 25, page 38, line 36, leave out <involving> and insert—

(a) that would reasonably be regarded as being both serious and organised, and

(b) that involves>

### **Kenny MacAskill**

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

### **Kenny MacAskill**

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

**Robert Brown**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Section 26**

**Robert Brown**

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

**Section 27**

**Robert Brown**

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

**Kenny MacAskill**

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

**Robert Brown**

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

**Kenny MacAskill**

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

**Section 28**

**Robert Brown**

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

**Bill Aitken**

**Supported by: Robert Brown**

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

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

**Kenny MacAskill**

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

**Robert Brown**

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

**Robert Brown**

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

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

**After section 28**

**Kenny MacAskill**

**107** After section 28, insert—

*<Genocide, crimes against humanity and war crimes*

**Genocide, crimes against humanity and war crimes: UK residents**

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

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

- (1) In this Part—

“United Kingdom national” means—

- (a) a British citizen, a British Overseas Territories citizen, a British National (Overseas) or a British Overseas citizen,
- (b) a person who under the British Nationality Act 1981 (c.61) is a British subject, or
- (c) a British protected person within the meaning of that Act,

“United Kingdom resident” means a person who is resident in the United Kingdom.

- (2) To the extent that it would not otherwise be the case, the following individuals are to be treated for the purposes of this Part as being resident in the United Kingdom—

- (a) an individual who has indefinite leave to remain in the United Kingdom,
  - (b) any other individual who has made an application for such leave (whether or not it has been determined) and who is in the United Kingdom,
  - (c) an individual who has leave to enter or remain in the United Kingdom for the purposes of work or study and who is in the United Kingdom,
  - (d) an individual who has made an asylum claim, or a human rights claim, which has been granted,
  - (e) any other individual who has made an asylum claim or a human rights claim (whether or not the claim has been determined) and who is in the United Kingdom,
  - (f) an individual named in an application for indefinite leave to remain, an asylum claim or a human rights claim as a dependant of the individual making the application or claim if—
    - (i) the application or claim has been granted, or
    - (ii) the named individual is in the United Kingdom (whether or not the application or claim has been determined),
  - (g) an individual who would be liable to removal or deportation from the United Kingdom but cannot be removed or deported because of section 6 of the Human Rights Act 1998 (c.42) or for practical reasons,
  - (h) an individual—
    - (i) against whom a decision to make a deportation order under section 5(1) of the Immigration Act 1971 (c.77) by virtue of section 3(5)(a) of that Act (deportation conducive to the public good) has been made,
    - (ii) who has appealed against the decision to make the order (whether or not the appeal has been determined), and
    - (iii) who is in the United Kingdom,
  - (i) an individual who is an illegal entrant within the meaning of section 33(1) of the Immigration Act 1971 or who is liable to removal under section 10 of the Immigration and Asylum Act 1999 (c.33),
  - (j) an individual who is detained in lawful custody in the United Kingdom.
- (3) When determining for the purposes of this Part whether any other individual is resident in the United Kingdom regard is to be had to all relevant considerations including—
- (a) the periods during which the individual is, has been or intends to be in the United Kingdom,
  - (b) the purposes for which the individual is, has been or intends to be in the United Kingdom,
  - (c) whether the individual has family or other connections to the United Kingdom and the nature of those connections, and
  - (d) whether the individual has an interest in residential property located in the United Kingdom.

(4) In this section—

“asylum claim” means—

- (a) a claim that it would be contrary to the United Kingdom’s obligations under the Refugee Convention for the claimant to be removed from, or required to leave, the United Kingdom,
- (b) a claim that the claimant would face a real risk of serious harm if removed from the United Kingdom,

“Convention rights” means the rights identified as Convention rights by section 1 of the Human Rights Act 1998,

“detained in lawful custody” means—

- (a) detained in pursuance of a sentence of imprisonment or detention, a sentence of custody for life or a detention and training order,
- (b) remanded in or committed to custody by an order of a court,
- (c) detained pursuant to an order under section 2 of the Colonial Prisoners Removal Act 1884 (c.31) or a warrant under section 1 or 4A of the Repatriation of Prisoners Act 1984 (c.47),
- (d) detained under Part 3 of the Mental Health Act 1983 (c.20) or by virtue of an order under section 5 of the Criminal Procedure (Insanity) Act 1964 (c.84) or section 6 or 14 of the Criminal Appeal Act 1968 (c.19) (hospital orders etc.),
- (e) detained by virtue of an order under Part 6 of the Criminal Procedure (Scotland) Act 1995 (c.46) (other than an order under section 60C) or a hospital direction under section 59A of that Act, and includes detention by virtue of the special restrictions set out in Part 10 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) to which a person is subject by virtue of an order under section 59 of the Criminal Procedure (Scotland) Act 1995,
- (f) detained under Part 3 of the Mental Health (Northern Ireland) Order 1986 (SI 1986/595) or by virtue of an order under section 11 or 13(5A) of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47),

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

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

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

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

**Kenny MacAskill**

**108** After section 28, insert—

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

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

**“9A Retrospective application of certain offences**

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

- (8) But section 5 of this Act, so far as it has effect in relation to relevant offences, does not apply to a failure to exercise control of the kind mentioned in subsection (2) or (3) of that section which occurred before 17 December 2001 unless, at the time it occurred, it amounted in the circumstances to a criminal offence under international law.
- (9) In this section, “relevant offence” means an offence under section 1 or 2 of this Act or an offence ancillary to such an offence.

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

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

**After section 31**

**Kenny MacAskill**

**109** After section 31, insert—

*<Offensive weapons etc.*

**Offensive weapons etc.**

- (1) The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) is amended as follows.
- (2) In section 47 (prohibition of the carrying of offensive weapons)—
  - (a) in subsection (1), the words from “without” to “him,” are repealed,
  - (b) after subsection (1), insert—
    - “(1A) It is a defence for a person charged with an offence under subsection (1) to show that the person had a reasonable excuse or lawful authority for having the weapon with the person in the public place.”, and
  - (c) for subsection (4), substitute—
    - “(4) In this section—
      - “offensive weapon” means any article—
        - (a) made or adapted for use for causing injury to a person, or
        - (b) intended, by the person having the article, for use for causing injury to a person by—

(i) the person having it, or

(ii) some other person,

“public place” means any place other than—

(a) domestic premises,

(b) school premises (within the meaning of section 49A(6)),

(c) a prison (within the meaning of section 49C(7)),

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

(3) In section 49 (offence of having in public place article with blade or point)—

(a) in subsection (4), for the words “prove that he had good reason” substitute “show that the person had a reasonable excuse”,

(b) in subsection (5), for “prove” substitute “show”, and

(c) for subsection (7), substitute—

“(7) In this section, “public place” has the same meaning as in section 47(4).”.

(4) In section 49A (offence of having article with blade or point (or offensive weapon) on school premises)—

(a) in subsection (3), for the words “prove that he had good reason” substitute “show that the person had a reasonable excuse”, and

(b) in subsection (4), for “prove” substitute “show”.

(5) In section 49C(2) (offence of having offensive weapon etc. in prison), for the words “prove that he had good reason” substitute “show that the person had a reasonable excuse”.

(6) In section 50(4) (extension of constable’s power to stop, search and arrest without warrant), for “3” substitute “4”.>

## **Johann Lamont**

**11** After section 31, insert—

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

(1) The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) is amended as follows.

(2) After section 49A, insert—

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

(1) Any person who has an article to which section 49 of this Act applies with him on workplace premises is guilty of an offence.

(2) Any person who has an offensive weapon within the meaning of section 47 of this Act with him on workplace premises is guilty of an offence.



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

**Rhoda Grant**

**402** After section 31, insert—

*<Stalking*

**Offence of stalking**

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

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

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

- (h) keeping B or any other person under surveillance,
- (i) acting in any other way that a reasonable person would expect would arouse apprehension or fear in B for B’s own safety or for the safety of any other person, and

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

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

### **Section 34**

#### **Kenny MacAskill**

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

#### **Kenny MacAskill**

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

#### **Kenny MacAskill**

**363** In section 34, page 49, line 7, at end insert—

<and reference may also be had to any sounds accompanying the image or the series of images.>

#### **Kenny MacAskill**

**364** In section 34, page 49, line 31, after <images> insert—

- <(i) any sounds accompanying the series of images,
- (ii)>

#### **Robert Brown**

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

#### **Kenny MacAskill**

**366** In section 34, page 50, line 18, after <images> insert—

- <(i) any sounds accompanying the series of images,
- (ii)>

#### **Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**After section 34**

**Kenny MacAskill**

- 110** After section 34, insert—

**<Voyeurism: additional forms of conduct**

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

“(4A) The fourth thing is that A—

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

operates equipment beneath B’s clothing with the intention of enabling A or another person (“C”), for a purpose mentioned in subsection (7), to observe B’s genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B’s genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible.

(4B) The fifth thing is that A—

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

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

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

- (4) In section 26 (voyeurism towards a young child)—
- (a) after subsection (4), insert—
- “(4A) The fourth thing is that A operates equipment beneath B’s clothing with the intention of enabling A or another person (“C”), for a purpose mentioned in subsection (7), to observe—
- (a) B’s genitals or buttocks (whether exposed or covered with underwear),  
or
- (b) the underwear covering B’s genitals or buttocks,
- in circumstances where the genitals, buttocks or underwear would not otherwise be visible.
- (4B) The fifth thing is that A records an image beneath B’s clothing of—
- (a) B’s genitals or buttocks (whether exposed or covered with underwear),  
or
- (b) the underwear covering B’s genitals or buttocks,
- in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person (“C”), for a purpose mentioned in subsection (7), will look at the image.”,
- (b) in subsection (5)—
- (i) for “fourth” substitute “sixth”, and
- (ii) for paragraph (b), substitute—
- “(b) constructs or adapts a structure or part of a structure,  
with the intention of enabling A or another person to do an act referred to in subsection (2), (3), (4), (4A) or (4B).”,
- (c) in subsection (7), for “and (4)” substitute “, (4), (4A) and (4B)”, and
- (d) in subsection (8)—
- (i) after “section 9(3)” insert “, (4A)”, and
- (ii) after “subsections (3)” insert “, (4A)”.
- (5) In section 36 (voyeurism towards an older child)—
- (a) after subsection (4), insert—
- “(4A) The fourth thing is that A operates equipment beneath B’s clothing with the intention of enabling A or another person (“C”), for a purpose mentioned in subsection (7), to observe—
- (a) B’s genitals or buttocks (whether exposed or covered with underwear),  
or
- (b) the underwear covering B’s genitals or buttocks,
- in circumstances where the genitals, buttocks or underwear would not otherwise be visible.
- (4B) The fifth thing is that A records an image beneath B’s clothing of—
- (a) B’s genitals or buttocks (whether exposed or covered with underwear),  
or

(b) the underwear covering B’s genitals or buttocks,

in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person (“C”), for a purpose mentioned in subsection (7), will look at the image.”,

(b) in subsection (5)—

(i) for “fourth” substitute “sixth”, and

(ii) for paragraph (b), substitute—

“(b) constructs or adapts a structure or part of a structure,

with the intention of enabling A or another person to do an act referred to in subsection (2), (3), (4), (4A) or (4B).”,

(c) in subsection (7), for “and (4)” substitute “, (4), (4A) and (4B)”, and

(d) in subsection (8)—

(i) after “section 9(3)” insert “, (4A)”, and

(ii) after “subsections (3)” insert “, (4A)”.>

### **Kenny MacAskill**

**111** After section 34, insert—

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

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

### **Kenny MacAskill**

**370** After section 34, insert—

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

(1) The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) is amended as follows.

(2) In section 11 (trading in prostitution and brothel-keeping)—

(a) in subsection (1), for the words from “liable” to the end substitute “guilty of an offence and liable to the penalties set out in subsection (1A)”,

(b) after that subsection insert—

“(1A) A person—

(a) guilty of the offence set out in subsection (1)(a) is liable—

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

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

(b) guilty of the offence set out in subsection (1)(b) is liable—

(i) on conviction on indictment, to imprisonment for a term not exceeding two years,

- (ii) on summary conviction, to imprisonment for a term not exceeding 12 months.”,
- (c) in subsection (4), for “subsection (1)” substitute “subsection (1A)(a)”, and
- (d) for subsection (6) substitute—
  - “(6) A person guilty of an offence under subsection (5) is liable—
    - (a) on conviction on indictment, to imprisonment for a term not exceeding seven years, to a fine, or to both,
    - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both.”.
- (3) In section 13(9) (living on earnings of another from male prostitution), for paragraphs (a) and (b) substitute—
  - “(a) on conviction on indictment, to imprisonment for a term not exceeding seven years, to a fine, or to both,
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both.”.>

**Trish Godman**

8 After section 34, insert—

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

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

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

**11A Engaging in a paid-for sexual activity**

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

**11B Advertising paid-for sexual activities**

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

20 **11C Facilitating engagement in a paid-for sexual activity**

- (1) A person (“A”) commits an offence, to be known as the offence of facilitating engagement in a paid-for sexual activity, if A knowingly facilitates the engagement of another person (“B”) in a paid-for sexual activity with another person (“C”).

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

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

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

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

**Margo MacDonald**

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

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

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



**Margo MacDonald**

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

**<11AB Profiting from coerced paid-for sexual activities**

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

**Margo MacDonald**

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

**Margo MacDonald**

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

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

**Nigel Don**

**461** After section 34, insert—

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

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

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

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

- (1) A person (“A”) commits an offence, to be known as the offence of paying for sexual services of a coerced prostitute, if—
  - (a) A makes or promises payment for the sexual services of a prostitute (“B”),
  - (b) a third person (“C”) has engaged in exploitative conduct of a kind likely to induce or encourage B to provide the sexual services for which A has made or promised payment, and
  - (c) C engaged in that conduct for or in the expectation of gain for C or another person (apart from A or B).
- (2) The following are irrelevant—
  - (a) where in the world the sexual services are to be provided and whether those services are provided,

- (b) whether A is, or ought to be, aware that C has engaged in exploitative conduct.
- (3) C engages in exploitative conduct if—
  - (a) C uses force, threats (whether or not relating to violence) or any other form of coercion, or
  - (b) C practises any form of deception.”.
- (3) In the table in schedule 2 insert at the appropriate place—

“Paying for sexual services of a coerced prostitute	Section 11E	A fine not exceeding level 3 on the standard scale”.>	
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**Section 35**

**Kenny MacAskill**

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

<( ) after subsection (1) insert—

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

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

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

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

there or elsewhere; or

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

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

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

outwith the country.”.>

**Kenny MacAskill**

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

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

<( ) in subsection (6)—

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

**Kenny MacAskill**

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

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

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

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

  - (a) in relation to an individual (the “passenger”), he arranges or facilitates—
    - (i) the arrival in or the entry into a country other than the United Kingdom of the passenger,
    - (ii) travel by the passenger within a country other than the United Kingdom,
    - (iii) the departure of the passenger from a country other than the United Kingdom, and
  - (b) he—
    - (i) intends to exploit the passenger, or
    - (ii) believes that another person is likely to exploit the passenger, (wherever the exploitation is to occur).”
- (d) in subsection (4)—
  - (i) in paragraph (b), the words from “as a result” to “Act 2004,” become sub-paragraph (i),
  - (ii) immediately following that sub-paragraph insert “or—

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

### After section 35

#### Kenny MacAskill

112 After section 35, insert—

*<Slavery, servitude and forced or compulsory labour*

#### **Slavery, servitude and forced or compulsory labour**

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

### After section 36

#### Kenny MacAskill

113 After section 36, insert—

#### **<Articles for use in fraud**

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

- (4) A person guilty of an offence under subsection (3) is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both,
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine, or to both.
- (5) In this section, “article” includes a program or data held in electronic form.>

**After section 37**

**Kenny MacAskill**

**114** After section 37, insert—

*<Abolition of offences of sedition and leasing-making*

**Abolition of offences of sedition and leasing-making**

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

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

**Kenny MacAskill**

**378** After section 37, insert—

*<Threatening, alarming or distressing behaviour*

**Threatening, alarming or distressing behaviour**

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

- (a) behaviour of any kind including, in particular, things said or otherwise communicated as well as things done,
  - (b) behaviour consisting of—
    - (i) a single act, or
    - (ii) a course of conduct.
- (5) The reference in subsection (1)(a)(i) to fear for a person’s safety is to fear that the person’s life could be endangered or that the person’s physical or psychological well-being could be harmed.
- (6) A person guilty of an offence under subsection (1) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.>

**Bill Aitken**

**115** After section 37, insert—

**<PART**

DOUBLE JEOPARDY

**Rule against double jeopardy**

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

**Bill Aitken**

**116** After section 37, insert—

**<Plea in bar of trial**

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

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



**Bill Aitken**

**117** After section 37, insert—

**<Eventual death of injured person**

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

**Bill Aitken**

**118** After section 37, insert—

**<Tainted acquittals**

- (1) A person who, whether on indictment or complaint (the “original” indictment or complaint), has been acquitted of an offence (the “original offence”) may, provided that the conditions mentioned in subsection (3) are satisfied, be charged with, and prosecuted anew for—
  - (a) the original offence, or
  - (b) an offence arising out of the same, or largely the same, acts or omissions as gave rise to the original offence.
- (2) Whether the acquittal was before or after the coming into force of this section is, for the purposes of the section, immaterial.
- (3) The conditions are—

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

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

**Bill Aitken**

**119** After section 37, insert—

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

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

of the 1995 Act (prevention of delay in trials) applies to an accused person who is detained under subsection (4) as it applies to an accused person detained by virtue of being committed until liberated in due course of law.>

**Bill Aitken**

**120** After section 37, insert—

**<Admission subsequent to acquittal**

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

**Robert Brown**

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

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

**Bill Aitken**

**121** After section 37, insert—

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

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

## Bill Aitken

122 After section 37, insert—

### <New evidence

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

- (11) But subsection (1) does not apply as respects a person's acquittal of an offence so added if the date of acquittal is earlier than that on which the addition is effected.>

**Bill Aitken**

**123** After section 37, insert—

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

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

**Bill Aitken**

**124** After section 37, insert—

**<Nullity of proceedings on previous indictment or complaint**

- (1) Subsection (3) applies where—

- (a) a person has, whether on indictment or complaint—
    - (i) been charged with, and
    - (ii) acquitted or convicted of, an offence, and
  - (b) the conditions mentioned in subsection (4) are satisfied.
- (2) Whether the conviction or acquittal was before or after the coming into force of this section is, for the purposes of the section, immaterial.
  - (3) The person may be charged with, and prosecuted anew for, the offence.
  - (4) The conditions are that, on the application of the prosecutor and after hearing the parties, the High Court is satisfied—
    - (a) that the proceedings on the indictment or complaint were a nullity, and
    - (b) that it would not be contrary to the interests of justice to proceed as mentioned in subsection (3).>

**Bill Aitken**

**125** After section 37, insert—

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

- (1) Schedule 1 to the Contempt of Court Act 1981 (c.49) (times when proceedings are active for the purposes of section 2 of that Act) is amended as follows.
- (2) After paragraph 1 (the expressions “criminal proceedings” and “appellate proceedings”), there is inserted—
 

“1A Proceedings under sections (*Plea in bar of trial*) to (*Nullity of proceedings on previous indictment or complaint*) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 00) are criminal proceedings (and are not appellate proceedings) for the purposes of this Schedule.”
- (3) In paragraph 4 (initial steps of criminal proceedings), at the end there is added—
 

“(f) the making of an application under section (*Tainted acquittals*)(3)(a)(ii) or (b) (tainted acquittals), (*Admission subsequent to acquittal*)(3) (admission subsequent to acquittal) or (*New evidence*)(2)(b) (new evidence) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 00).”
- (4) In paragraph 5 (conclusion of criminal proceedings), at the end there is added—
 

“(d) where the initial steps of the proceedings are as mentioned in paragraph 4(f)—
 
  - (i) by refusal of the application,
  - (ii) if the application is granted and within 2 months thereafter a new prosecution is brought, by acquittal, or as the case may be by sentence, in the new prosecution.”
- (5) In paragraph 7 (discontinuance of proceedings), at the end there is added—
 

“(d) where the initial steps of the proceedings are as mentioned in paragraph 4(f) and the application is granted, if no new prosecution is brought within 2 months thereafter.”>



## Section 38

### Robert Brown

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

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

### Bill Aitken

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

### Bill Aitken

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

### Richard Baker

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

<(5) The Scottish Ministers must, as soon as possible after the end of each of the reporting years, lay before the Scottish Parliament and publish a report on the disposal of cases (“relevant cases”) involving children who, but for section 41A of the 1995 Act (as inserted by subsection (2)), could have been prosecuted.

(6) For the purposes of subsection (5), the “reporting years” are—

- (a) the period of 12 months beginning with the day on which this section comes into force, and
- (b) the periods of 12 months beginning with the first and second anniversaries of that day.

(7) A report under subsection (5) must, in particular—

- (a) specify the number of relevant cases disposed of during the reporting year,
- (b) set out how those cases were disposed of, the costs and other resources involved in those disposals, and what (if any) alternative disposals were considered, and
- (c) state what (if any) consideration the Scottish Ministers have given during the year covered by the report to the merits of altering the range of disposals available in such cases.>

### Robert Brown

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

<( ) The Scottish Ministers may not bring subsections (1) to (4) into force until the Children’s Hearings (Scotland) Act 2010 (asp 00) is fully in force.>

## Section 39

### Kenny MacAskill

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

**Kenny MacAskill**

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

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

**Section 40**

**Kenny MacAskill**

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

**Bill Aitken**

**Supported by: Robert Brown**

**131** Leave out section 40

**After section 40**

**Margaret Curran**

**403** After section 40, insert—

*<Parole: victims' representation*

**Victims' representation at Parole Board hearings**

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

- (i) information about any parts of the hearing from which the victim and any accompanying person are, or the victim’s representative is, to be excluded, and
  - (ii) any limits on their participation during the other parts of the hearing;
  - (c) at the hearing, afford the victim (or the victim’s representative) a reasonable opportunity to be heard.
- (5B) A victim’s representative may only be a member of the victim’s immediate family or a friend of the victim.
- (5C) In reaching its decision at or after the hearing, the Board must take account of—
- (a) any written representations made under subsection (1); and
  - (b) anything said by the victim (or the victim’s representative) at the hearing.”.>

**After section 41**

**Kenny MacAskill**

**420** After section 41, insert—

*<Grant of warrants*

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

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

**After section 43**

**Kenny MacAskill**

**132** After section 43, insert—

**<Bail conditions: remote monitoring requirements**

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

**Section 44**

**Kenny MacAskill**

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

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

**Kenny MacAskill**

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

**Kenny MacAskill**

- 423 In section 44, page 58, line 11, at end insert <and  
( ) after “successor” insert “or the Solicitor General”,>

**Kenny MacAskill**

- 424 In section 44, page 58, leave out line 13 and insert—  
<( ) for “in name of” substitute “at the instance of Her Majesty’s Advocate or”,  
and>

**Kenny MacAskill**

- 425 In section 44, page 58, line 17, at end insert—  
<(2AA) All indictments which have been raised at the instance of the Solicitor General shall remain effective notwithstanding the holder of the office of Solicitor General subsequently having died or demitted office and may be taken up and proceeded with by his successor or the Lord Advocate.>

**Kenny MacAskill**

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

**Kenny MacAskill**

- 427 In section 44, page 58, line 24, at end insert—  
<( ) in paragraph (a), after “subsection (1)” insert “or (2AA)”,>

**After section 46**

**Kenny MacAskill**

- 428 After section 46, insert—  
*<Dockets and charges in sex cases*

**Dockets and charges in sex cases**

After section 288B of the 1995 Act insert—

*“Dockets and charges in sex cases*

**288BA Dockets for charges of sexual offences**

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

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

**288BB Mixed charges for sexual offences**

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

**After section 51**

**Kenny MacAskill**

**429** After section 51, insert—

*<Personal conduct of case by accused*

**Prohibition of personal conduct of case by accused in certain proceedings**

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

- (a) for subsection (1) substitute—
  - “(1) An accused charged with a sexual offence to which this section applies is prohibited from conducting his case in person at, or for the purposes of, any relevant hearing in the course of proceedings (other than proceedings in a JP court) in respect of the offence.
  - (1A) In subsection (1), “relevant hearing” means a hearing at, or for the purposes of, which a witness is to give evidence.”, and
- (b) subsection (8) is repealed.
- (3) In section 288D (appointment of solicitor by court in cases to which section 288C applies)—
  - (a) in subsection (1), after “proceedings” insert “(other than proceedings in a JP court)”,
  - (b) in subsection (2)(a), for sub-paragraphs (i) and (ii) substitute—
    - “(i) the conduct of his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the proceedings; or”, and
  - (c) in subsection (6), for the words from “of the accused’s defence” to the end substitute “referred to in subsection (2)(a) above.”.
- (4) In section 288E (prohibition of personal conduct of defence in certain cases involving child witness under the age of 12)—
  - (a) subsection (1) is repealed,
  - (b) in subsection (2)(b), for “the trial” substitute “any hearing in the course of the proceedings”,
  - (c) after subsection (2) insert—
    - “(2A) The accused is prohibited from conducting his case in person at, or for the purposes of, any hearing at, or for the purposes of, which the child witness is to give evidence.”,
  - (d) in subsection (4), at the end insert “and as if references to a relevant hearing were references to a hearing referred to in subsection (2A) above”,
  - (e) in subsection (6)—
    - (i) for paragraphs (za) and (a) substitute—
      - “(a) that his case at, or for the purposes of, any hearing in the course of the proceedings at, or for the purposes of, which the child witness is to give evidence may be conducted only by a lawyer.”, and
    - (ii) in paragraph (c), for the words from “preliminary” to “trial” substitute “hearing”, and
  - (f) subsection (8) is repealed.
- (5) In section 288F (power to prohibit personal conduct of defence in other cases involving vulnerable witnesses)—
  - (a) in subsection (1), for “the trial” substitute “any hearing in the course of the proceedings”,

- (b) in subsection (2), for the words from “defence” to the end substitute “case in person at any hearing at, or for the purposes of, which the vulnerable witness is to give evidence.”,
- (c) in subsection (3)(a), for “trial” substitute “hearing”,
- (d) in subsection (4), for the words from “after” to the end substitute “in relation to a hearing after, as well as before, the hearing has commenced.”,
- (e) subsection (4A) is repealed,
- (f) in subsection (5), at the end insert “and as if references to a relevant hearing were references to any hearing in respect of which an order is made under this section”, and
- (g) subsection (6) is repealed.>

## Section 58

### James Kelly

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

### James Kelly

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

### James Kelly

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

### James Kelly

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

### James Kelly

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

## After section 58

### Stewart Maxwell

418 After section 58, insert—

**<Retention of samples etc. where offer under sections 302 to 303ZA of 1995 Act accepted**

After section 18A of the 1995 Act insert—

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

- (1) This section applies to—
  - (a) relevant physical data taken from or provided by a person under section 18(2), and
  - (b) any sample, or any information derived from a sample, taken from a person under section 18(6) or (6A),where the conditions in subsection (2) are satisfied.
- (2) The conditions are—
  - (a) the relevant physical data or sample was taken from or provided by the person while the person was under arrest or being detained in connection with the offence or offences in relation to which a relevant offer is issued to the person, and
  - (b) the person—
    - (i) accepts a relevant offer, or
    - (ii) in the case of a relevant offer other than one of the type mentioned in paragraph (d) of subsection (3), is deemed to accept a relevant offer.
- (3) In this section “relevant offer” means—
  - (a) a conditional offer under section 302,
  - (b) a compensation offer under section 302A,
  - (c) a combined offer under section 302B, or
  - (d) a work offer under section 303ZA.
- (4) Subject to subsections (6) and (7) and section 18AB(9) and (10), the relevant physical data, sample or information must be destroyed no later than the destruction date.
- (5) In subsection (4), “destruction date” means—
  - (a) in relation to a relevant offer that relates only to—
    - (i) a relevant sexual offence,
    - (ii) a relevant violent offence, or
    - (iii) both a relevant sexual offence and a relevant violent offence,the date of expiry of the period of 3 years beginning with the date on which the relevant offer is issued or such later date as an order under section 18AB(2) or (6) may specify,



- (b) in relation to a relevant offer that relates to—
    - (i) an offence or offences falling within paragraph (a), and
    - (ii) any other offence,

the date of expiry of the period of 3 years beginning with the date on which the relevant offer is issued or such later date as an order under section 18AB(2) or (6) may specify,
  - (c) in relation to a relevant offer that does not relate to an offence falling within paragraph (a), the date of expiry of the period of 2 years beginning with the date on which the relevant offer is issued.
- (6) If the relevant offer is recalled by virtue of section 302C(5) or a decision to uphold it is quashed under section 302C(7)(a), all record of the relevant physical data, sample and information derived from the sample must be destroyed as soon as possible after the recall or, as the case may be, quashing of the decision.
  - (7) If the relevant offer is set aside by virtue of section 303ZB, all record of the relevant physical data, sample and information derived from the sample must be destroyed as soon as possible after the setting aside.
  - (8) In this section, “relevant sexual offence” and “relevant violent offence” have, subject to the modification in subsection (9), the same meanings as in section 19A(6) and include any attempt, conspiracy or incitement to commit such an offence.
  - (9) The modification is that the definition of “relevant sexual offence” in section 19A(6) is to be read as if for paragraph (g) there were substituted—
    - “(g) public indecency if it is apparent from the relevant offer (as defined in section 18AA(3)) relating to the offence that there was a sexual aspect to the behaviour of the person to whom the relevant offer is issued;”.

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

- (1) This section applies where the destruction date for relevant physical data, a sample or information derived from a sample falls within section 18AA(5)(a) or (b).
- (2) On a summary application made by the relevant chief constable within the period of 3 months before the destruction date, the sheriff may, if satisfied that there are reasonable grounds for doing so, make an order amending, or further amending, the destruction date.
- (3) An application under subsection (2) may be made to any sheriff—
  - (a) in whose sheriffdom the appropriate person resides,
  - (b) in whose sheriffdom that person is believed by the applicant to be, or
  - (c) to whose sheriffdom the person is believed by the applicant to be intending to come.
- (4) An order under subsection (2) must not specify a destruction date more than 2 years later than the previous destruction date.
- (5) The decision of the sheriff on an application under subsection (2) may be appealed to the sheriff principal within 21 days of the decision.

- (6) If the sheriff principal allows an appeal against the refusal of an application under subsection (2), the sheriff principal may make an order amending, or further amending, the destruction date.
- (7) An order under subsection (6) must not specify a destruction date more than 2 years later than the previous destruction date.
- (8) The sheriff principal's decision on an appeal under subsection (5) is final.
- (9) Section 18AA(4) does not apply where—
  - (a) an application under subsection (2) has been made but has not been determined,
  - (b) the period within which an appeal may be brought under subsection (5) against a decision to refuse an application has not elapsed, or
  - (c) such an appeal has been brought but has not been withdrawn or finally determined.
- (10) Where—
  - (a) the period within which an appeal referred to in subsection (9)(b) may be brought has elapsed without such an appeal being brought,
  - (b) such an appeal is brought and is withdrawn or finally determined against the appellant, or
  - (c) an appeal brought under subsection (5) against a decision to grant an application is determined in favour of the appellant,

the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the period has elapsed, or, as the case may be, the appeal is withdrawn or determined.

- (11) In this section—

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

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

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

## Stewart Maxwell

- 419 After section 58, insert—

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

After section 18A of the 1995 Act insert—

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

- (1) This section applies to—

- (a) relevant physical data taken from or provided by a person under section 18(2), and
- (b) any sample, or any information derived from a sample, taken from a person under section 18(6) or (6A),

where the conditions in subsection (2) are satisfied.

- (2) The conditions are—
  - (a) the person was arrested or detained in connection with a fixed penalty offence,
  - (b) the relevant physical data or sample was taken from or provided by the person while the person was under arrest or being detained in connection with that offence,
  - (c) after the relevant physical data or sample was taken from or provided by the person, a constable gave the person under section 129(1) of the 2004 Act—
    - (i) a fixed penalty notice in respect of that offence (the “main FPN”), or
    - (ii) the main FPN and one or more other fixed penalty notices in respect of fixed penalty offences arising out of the same circumstances as the offence to which the main FPN relates, and
  - (d) the person, in relation to the main FPN and any other fixed penalty notice of the type mentioned in paragraph (c)(ii)—
    - (i) pays the fixed penalty, or
    - (ii) pays any sum that the person is liable to pay by virtue of section 131(5) of the 2004 Act.
- (3) Subject to subsections (4) and (5), the relevant physical data, sample or information derived from a sample must be destroyed before the end of the period of 2 years beginning with—
  - (a) where subsection (2)(c)(i) applies, the day on which the main FPN is given to the person,
  - (b) where subsection (2)(c)(ii) applies and—
    - (i) the main FPN and any other fixed penalty notice are given to the person on the same day, that day,
    - (ii) the main FPN and any other fixed penalty notice are given to the person on different days, the later day.
- (4) Where—
  - (a) subsection (2)(c)(i) applies, and
  - (b) the main FPN is revoked under section 133(1) of the 2004 Act,the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the revocation.
- (5) Where—
  - (a) subsection (2)(c)(ii) applies, and

(b) the main FPN and any other fixed penalty notices are revoked under section 133(1) of the 2004 Act,

the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the revocations.

(6) In this section—

“the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),

“fixed penalty notice” has the meaning given by section 129(2) of the 2004 Act,

“fixed penalty offence” has the meaning given by section 128(1) of the 2004 Act.”.>

## Section 59

### James Kelly

**409** In section 59, page 72, line 19, leave out from <such> to second <offence> and insert—

<( ) an offence of assault, categorised by the Principal Reporter as grave, or

( ) such—

(i) other relevant violent offence, or

(ii) relevant sexual offence.>

### James Kelly

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

### Robert Brown

**380** In section 59, page 72, leave out lines 21 and 22, and insert—

<(7) Where this section applies, the sheriff may, on summary application by the relevant chief constable, make an order that, subject to section 18C(6) and (7), the relevant physical data, sample or the information must be destroyed no later than the destruction date.

(7A) The sheriff may only make the order referred to in subsection (7) if satisfied that the child continues to pose a risk to public safety and that retention of the relevant physical data, sample or information until the destruction date is justified by that risk.>

### Robert Brown

**381** In section 59, page 72, line 40, at end insert—

<“relevant chief constable” has the same meaning as in section 18A(11), with the modification that references to the person referred to in subsection (2) of that section are references to the child referred to in subsection (1);>

**James Kelly**

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

**Robert Brown**

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

**James Kelly**

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

**Section 61**

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Kenny MacAskill**

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

**Before section 62**

**Kenny MacAskill**

430 Before section 62, insert—

**<Admissibility of prior statements of witnesses: abolition of competence test**

- (1) This section applies in relation to a prior statement made by a witness before the commencement of section 24 of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) (“the 2004 Act”) (which abolishes the competence test for witnesses in criminal and civil proceedings).
- (2) For the purpose of the application of subsection (2)(c) of section 260 of the 1995 Act (admissibility of prior statement depends on competence of the witness at the time of the statement) in relation to the statement, section 24 of the 2004 Act is taken to have been in force at the time the statement was made.
- (3) In this section, “prior statement” has the meaning it has in section 260 of the 1995 Act.>

**Section 62**

**Robert Brown**

383 In section 62, page 77, line 1, after <may> insert <, if satisfied that there is good reason to do so,>

## After section 64

### Kenny MacAskill

384 After section 64, insert—

#### <Child witnesses in proceedings for people trafficking offences

In section 271 of the 1995 Act (vulnerable witnesses: main definitions)—

- (a) in subsection (1)(a), for “age of 16” substitute “relevant age”, and
- (b) after subsection (1), insert—

“(1A) In subsection (1)(a), “the relevant age” means—

- (a) in the case of a person who is giving or is to give evidence in proceedings for an offence under section 22 of the Criminal Justice (Scotland) Act 2003 (asp 7) (trafficking in prostitution etc.) or section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) (trafficking people for exploitation), the age of 18, and
- (b) in any other case, the age of 16.”.>

## Section 66

### Kenny MacAskill

431 In section 66, page 80, line 13, leave out from <other> to end of line 16 and insert <the jury>

### Kenny MacAskill

432 In section 66, page 80, line 18, leave out <any persons within paragraph (a)(i) to (iii)> and insert <the judge or the jury>

### Kenny MacAskill

433 In section 66, page 81, line 6, leave out <material> and insert <information>

### Kenny MacAskill

434 In section 66, page 81, line 8, leave out <may> and insert <must>

### Kenny MacAskill

435 In section 66, page 81, line 12, leave out <material”> and insert <information”>

### Kenny MacAskill

436 In section 66, page 82, line 16, leave out <the weight of>

### Kenny MacAskill

437 In section 66, page 82, line 18, leave out <the sole or decisive evidence> and insert <material in>

**Kenny MacAskill**

- 438 In section 66, page 82, line 36, leave out <warning> and insert <direction>

**Kenny MacAskill**

- 439 In section 66, page 83, leave out lines 33 to 36

**Schedule 3**

**Kenny MacAskill**

- 440 In schedule 3, page 148, line 28, leave out <treat the conviction as unsafe> and insert <quash the conviction>

**Kenny MacAskill**

- 441 In schedule 3, page 148, line 31, leave out <treat the conviction as unsafe> and insert <quash the conviction>

**After section 67**

**Kenny MacAskill**

- 442 After section 67, insert—

**<European evidence warrants**

- (1) The Scottish Ministers may by order make provision for the purposes of and in connection with implementing any obligations of the United Kingdom created by or arising under the Framework Decision (so far as they have effect in or as regards Scotland).
- (2) The provision may, in particular, confer functions—
  - (a) on the Scottish Ministers,
  - (b) on the Lord Advocate,
  - (c) on other persons.
- (3) An order under subsection (1) may modify any enactment.
- (4) An order under subsection (1) may contain provision creating offences and a person who commits such an offence is liable to such penalties, not exceeding those mentioned in subsection (5), as are provided for in the order.
- (5) Those penalties are—
  - (a) on conviction on indictment, imprisonment for a period not exceeding 2 years, or a fine, or both,
  - (b) on summary conviction, imprisonment for a period not exceeding 12 months, or a fine not exceeding the statutory maximum, or both.
- (6) In this section, the “Framework Decision” means Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters.>

## Before section 68

### Kenny MacAskill

443 Before section 68, insert—

#### <Lists of jurors

- (1) The 1995 Act is amended as follows.
- (2) In section 84 (juries: returns of jurors and preparation of lists)—
  - (a) in subsection (3), for “list” substitute “lists”,
  - (b) for subsection (4) substitute—
    - “(4) For the purpose of a trial in the sheriff court, the sheriff principal must furnish the clerk of court with a list of names, containing the number of persons required, from lists of potential jurors of—
      - (a) the sheriff court district in which the trial is to be held (the “local district”), and
      - (b) if the sheriff principal considers it appropriate, any other sheriff court district or districts in the sheriffdom in which the trial is to be held (“other districts”).
    - (4A) Where the sheriff principal furnishes a list containing names of potential jurors of other districts, the sheriff principal may determine the proportion as between the local district and the other districts in which jurors are to be summoned.”,
  - (c) in subsection (5), for “list”, in both places where it occurs, substitute “lists”, and
  - (d) subsection (7) is repealed.
- (3) In section 85(4) (juries: citation and attendance of jurors)—
  - (a) for the words from the beginning to “shall”, in the first place where it occurs, substitute “The sheriff clerk of—
    - (a) the sheriffdom in which the High Court is to sit, or
    - (b) the sheriff court district in which a trial in the sheriff court is to be held, shall”, and
  - (b) the word “such”, in the first place where it occurs, is repealed.>

## Section 68

### David McLetchie

415 In section 68, page 86, line 14, leave out from <for> to <relevant”> and insert <at beginning insert “subject to subsection (1A),”>

### David McLetchie

416 In section 68, page 86, leave out lines 17 to 19 and insert—

<“(1A) In relation to criminal proceedings, a person is qualified and liable to serve as a juror despite being over 65 years of age.”>



## Section 69

### David McLetchie

- 417 In section 69, page 86, line 30, at end insert <and  
( ) persons who have attained the age of 71;>

## Section 70

### 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).>

## Section 72

### Kenny MacAskill

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

### Trish Godman

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

### Margo MacDonald

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

### 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**

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

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

**Kenny MacAskill**

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

**Section 74**

**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).”.>

**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).”.>

**After section 74**

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

#### **After section 75**

##### **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;”.>

#### **After section 79**

##### **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.”.

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

**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—
    - “(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”.>

## **Section 80**

### **Angela Constance**

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

## Section 89

### 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

### Bill Aitken

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

## Section 90

### Bill Aitken

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

### Bill Aitken

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

## Section 91

### 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)>

## Section 92

### 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)>

## Section 93

### Bill Aitken

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

## **Section 94**

**Bill Aitken**

**Supported by: Robert Brown**

- 156** Leave out section 94

## **Section 95**

**Bill Aitken**

**Supported by: Robert Brown**

- 157** Leave out section 95

## **Section 96**

**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)>

## **Section 97**

**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)>

## **Section 98**

**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)>

## **Section 100**

**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)>

## **Section 102**

**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)>

**Section 106**

**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)>

**Section 111**

**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)>

**Section 116**

**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),>

**Section 117**

**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>

**Section 121**

**Kenny MacAskill**

- 168** In section 121, page 123, leave out lines 2 and 3 and insert—  
<(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.>

## Section 122

### Kenny MacAskill

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

## Section 123

### Robert Brown

385 Leave out section 123

## After section 124

### 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.”.>

## Section 125

### 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)

### 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

### **Section 128**

**Kenny MacAskill**

- 173 In section 128, page 129, line 25, at end insert—
- <( ) in paragraph 2(3)(b), after “application” insert “(other than the date and place of birth of any person)”,
  - ( ) in paragraph 2(8)(a), after “application” insert “(other than the date and place of birth of any person)”,>

### **Section 129**

**Kenny MacAskill**

- 174 Leave out section 129

### **After section 130**

**Bill Aitken**

- 460 After section 130, insert—
- <Premises licence applications: crime prevention objective**
- In section 23(5) of the 2005 Act (grounds for refusal of premises licence application), after paragraph (b), insert—
- “(ba) that the appropriate chief constable has made a recommendation under section 21(5) that the application be refused.”.>

### **After section 131**

**Kenny MacAskill**

- 175\* After section 131, insert—
- <Reviews of premises licences: notification of determinations**
- (1) The 2005 Act is amended as follows.
  - (2) After section 39 (Licensing Board’s powers on review), insert—
- “39A Notification of determinations**
- (1) Where a Licensing Board, at a review hearing—
    - (a) decides to take one of the steps mentioned in section 39(2), or
    - (b) decides not to take one of those steps,the Board must give notice of the decision to each of the persons mentioned in subsection (2).

- (2) The persons referred to in subsection (1) are—
  - (a) the holder of the premises licence, and
  - (b) where the decision is taken in connection with a premises licence review application, the applicant.
- (3) Where subsection (1)(a) applies, the holder of the premises licence may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the decision.
- (4) Where—
  - (a) subsection (1)(a) or (b) applies, and
  - (b) the decision is taken in connection with a premises licence review application,
 the applicant may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the decision.
- (5) Where the clerk of a Board receives a notice under subsection (3) or (4), the Board must issue a statement of the reasons for the decision to—
  - (a) the person giving the notice, and
  - (b) any other person to whom the Board gave notice under subsection (1).
- (6) A statement of reasons under subsection (5) must be issued—
  - (a) by such time, and
  - (b) in such form and manner,
 as may be prescribed.”.>

**After section 132**

**Kenny MacAskill**

**176** After section 132, insert—

**<Premises licence applications: food hygiene certificates**

- (1) Section 50 of the 2005 Act (certificates as to planning, building standards and food hygiene) is amended as follows.
- (2) In subsection (7), for the words from “the requirements” to the end substitute “such requirements as the Scottish Ministers may, by order, specify.”.
- (3) After subsection (7), insert—
 

“(7A) An order under subsection (7) may specify requirements by reference to provision contained in another enactment.”.
- (4) In subsection (8)(c), for “the 1990 Act” substitute “section 5 of the Food Safety Act 1990 (c.16)”.>

## After section 134

### Kenny MacAskill

449 After section 134, insert—

#### <Extended hours applications: notification period

- (1) Section 69 of the 2005 Act (notification of extended hours application) is amended as follows.
- (2) After subsection (3), add—
  - “(4) Subsections (5) and (6) apply where the Licensing Board is satisfied that the application requires to be dealt with quickly.
  - (5) Subsections (2) and (3) have effect in relation to the application as if the references to the period of 10 days were references to such shorter period of not less than 24 hours as the Board may determine.
  - (6) Subsection (3) has effect in relation to the application as if for the word “must” there were substituted “may”.”.>

## Section 136

### Kenny MacAskill

177 In section 136, page 135, line 3, at end insert—

<“(ba) the notice does not include a recommendation under section 73(4),>

### Kenny MacAskill

178 In section 136, page 135, leave out lines 22 to 27 and insert—

- <(a) hold a hearing for the purposes of considering and determining the application, and
- (b) after having regard to the circumstances in which the personal licence previously held expired or, as the case may be, was surrendered—
  - (i) refuse the application, or
  - (ii) grant the application.”.>

## After section 137

### Kenny MacAskill

179 After section 137, insert—

#### <Appeals

In section 131(2) of the 2005 Act (appeals), the words “by way of stated case, at the instance of the appellant,” are repealed.>



#### **Schedule 4**

##### **Kenny MacAskill**

**180** In schedule 4, page 149, line 11, leave out <22(2) or>

##### **Kenny MacAskill**

**181** In schedule 4, page 150, leave out lines 18 to 21

#### **Section 140**

##### **Kenny MacAskill**

**182** Leave out section 140

#### **Section 142**

##### **Kenny MacAskill**

**183** Leave out section 142

#### **Section 143**

##### **Robert Brown**

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

##### **Kenny MacAskill**

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

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

##### **Kenny MacAskill**

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

<( ) an order under section (*European evidence warrants*)(1),>

##### **Bill Aitken**

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

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

##### **Kenny MacAskill**

**186** In section 143, page 138, leave out line 33

**Kenny MacAskill**

- 187 In section 143, page 138, line 33, at end insert—  
<( ) an order under section 146(1) containing provisions which modify any enactment  
(including this Act), or>

**Kenny MacAskill**

- 188 In section 143, page 138, line 34, leave out <146(1) or>

**Robert Brown**

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

**Schedule 5**

**Kenny MacAskill**

- 189 In schedule 5, page 151, line 35, at end insert—  
<*The Libel Act 1792 (c.60)*  
The Libel Act 1792 is repealed.  
*The Criminal Libel Act 1819 (c.8)*  
The Criminal Libel Act 1819 is repealed.  
*The Defamation Act 1952 (c.66)*  
In the Defamation Act 1952, section 17(2) is repealed.>

**Kenny MacAskill**

- 451 In schedule 5, page 152, line 10, at end insert—  
<*The Law Officers Act 1944 (c.25)*  
In section 2(3) of the Law Officers Act 1944 (Lord Advocate and Solicitor General for  
Scotland), for the words from “three” to the end substitute “287 of the Criminal  
Procedure (Scotland) Act 1995 (c.46)”.>

**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.>

**Kenny MacAskill**

**190** In schedule 5, page 152, line 24, at end insert—

<*The Incest and Related Offences (Scotland) Act 1986 (c.36)*

The Incest and Related Offences (Scotland) Act 1986 is repealed.>

**Kenny MacAskill**

**191** In schedule 5, page 153, line 3, after <89> insert <, 111>

**Kenny MacAskill**

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

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

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

**Kenny MacAskill**

**193** In schedule 5, page 153, line 12, at end insert—

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

In Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (minor and consequential amendments), in paragraph 44, sub-paragraph (2) is repealed.>

**Kenny MacAskill**

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

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

(a) in subsection (3), for “proceeded against, indicted” substitute “prosecuted”,

(b) in subsection (4), for “dealt with, indicted” substitute “prosecuted”.>

**Kenny MacAskill**

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

<In section 17A (right of person accused of sexual offence to be told about restriction on conduct of defence: arrest), in subsection (1)—

(a) for paragraphs (za) and (a) substitute—

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

(b) in paragraph (c), for the words from “preliminary” to “trial” substitute “hearing”.>

**Kenny MacAskill**

**455** In schedule 5, page 154, line 5, at end insert—

<In section 35 (judicial examination), in subsection (4A)—

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

**Kenny MacAskill**

**456** In schedule 5, page 154, line 42, at end insert—

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

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

In section 71 (first diet)—

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

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

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

**Kenny MacAskill**

**457** In schedule 5, page 155, line 3, at end insert—

<In section 79 (preliminary pleas and preliminary issues), in subsection (2)(b)(ii), after “under section” insert “22ZB(3)(b),”.>

### **Kenny MacAskill**

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

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

(a) for paragraph (a) substitute—

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

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

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

(a) for paragraph (a) substitute—

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

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

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

(a) for paragraph (a) substitute—

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

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

### **Kenny MacAskill**

**414** In schedule 5, page 155, line 31, leave out paragraphs 35 to 39

### **Kenny MacAskill**

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

<*The Defamation Act 1996 (c.31)*

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

### **Kenny MacAskill**

**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.>

**Kenny MacAskill**

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

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

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

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

**Kenny MacAskill**

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

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

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

- (a) in section 4 (prohibition on accused conducting case in person in certain cases), subsection (4),
- (b) section 17 (bail conditions: remote monitoring of restrictions on movements), and
- (c) in the schedule (further modifications of the 1995 Act), paragraph 55.>

**Kenny MacAskill**

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

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

**Kenny MacAskill**

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

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

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

**Kenny MacAskill**

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

## Section 148

### Robert Brown

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





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