

Criminal Justice (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections A1 to 91
Long Title

Schedules A1 to 3

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

Section A1

Michael Matheson

- 5 Move section A1 to after section 56

Section B1

Michael Matheson

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

Michael Matheson

- 6 In section B1, page 1, line 18, at end insert <, or
() in circumstances in which the constable believes that it is necessary to do so with respect to the care or protection of the person.>

Michael Matheson

- 7 Move section B1 to after section 56

After section B1

Michael Matheson

- 8 After section B1, insert—
<**Public safety at premises or events**
(1) A person who is not in police custody may be searched by a constable if—
(a) the person—
(i) is seeking to enter, or has entered, relevant premises, or
(ii) is seeking to attend, or is attending, a relevant event, and
(b) the further criteria are met.

- (2) Premises are or an event is relevant if—
 - (a) the premises may be entered, or the event may be attended, by members of the public (including where dependent on possession of a ticket or on payment of a charge), and
 - (b) the entry or the attendance is controlled, at the time of the entry or the attendance, by or on behalf of the occupier of the premises or the organiser of the event.
- (3) The further criteria to be met are that—
 - (a) the entry or the attendance is subject to a condition, imposed by the occupier of the premises or the organiser of the event, that the person consents to being searched, and
 - (b) the person informs the constable that the person consents to being searched by the constable.
- (4) A search under this section is to be carried out for the purpose of ensuring the health, safety or security of people on the premises or at the event.
- (5) Anything seized by a constable in the course of a search carried out under this section may be retained by the constable.>

Section C1

Michael Matheson

- 9 Move section C1 to after section 56

Before section D1

Michael Matheson

- 10 Before section D1, insert—

<Publication of information by police

- (1) The Police Service of Scotland must ensure that, as soon as practicable after the end of each reporting year, information is published on how many times during the reporting year a search was carried out by a constable—
 - (a) of a person not in police custody, and
 - (b) otherwise than under the authority of a warrant expressly conferring a power of search.
- (2) So far as practicable, the information is to disclose (in addition)—
 - (a) how many persons were searched on two or more occasions,
 - (b) the age and gender, and the ethnic and national origin, of the persons searched,
 - (c) the proportion of searches that resulted in—
 - (i) something being seized by a constable,
 - (ii) a case being reported to the procurator fiscal,
 - (d) the number of complaints made to the Police Service of Scotland about the carrying out of searches (or the manner in which they were carried out).

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

Section D1

Elaine Murray

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

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

Elaine Murray

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

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

Alison McInnes

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

- <(2A) For the purposes of a consultation under subsection (2), the Scottish Ministers must—
- (a) lay a copy of the proposed regulations before the Scottish Parliament,
 - (b) publish in such manner as they consider appropriate a copy of the proposed regulations, and
 - (c) have regard to the matters mentioned in subsection (2B).
- (2B) The matters are—
- (a) any resolution of the Parliament made,
 - (b) any report of any committee of the Parliament published,
 - (c) any representations to the Scottish Ministers made,
- in relation to the proposed regulations within 60 days of the day on which the copy of the proposed regulations is laid before the Parliament.

- (2C) In calculating any period of 60 days for the purposes of subsection (2B), no account is to be taken of any time during which the Scottish Parliament is dissolved or in recess for more than 4 days.
- (2D) When laying a draft of an instrument containing regulations under this section before the Scottish Parliament, the Scottish Ministers must also lay before the Parliament an explanatory document giving details of—
- (a) the consultation carried out under subsection (2),
 - (b) any representations received as a result of the consultation, and
 - (c) the changes (if any) made to the proposed regulations as a result of those representations.>

Alison McInnes

- 1 Leave out section D1

Michael Matheson

- 13 Move section D1 to after section 56

Section E1

Alison McInnes

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

Michael Matheson

- 14 Move section E1 to after section 56

Section F1

Michael Matheson

- 15 Move section F1 to after section 56

Section G1

Michael Matheson

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

Michael Matheson

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

Michael Matheson

- 18 In section G1, page 3, leave out lines 10 and 11 and insert—
<(c) in relation to such a search—

- (i) the record to be kept,
- (ii) the right of someone to receive a copy of the record.>

Michael Matheson

- 19 In section G1, page 3, leave out line 12

Michael Matheson

- 20 Move section G1 to after section 56

Section H1

Michael Matheson

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

Michael Matheson

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

Michael Matheson

- 23 Move section H1 to after section 56

Section I1

Michael Matheson

- 24 Move section I1 to after section 56

Section J1

Michael Matheson

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

Michael Matheson

- 26 In section J1, page 4, leave out line 23

Michael Matheson

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

Michael Matheson

- 28 Move section J1 to after section 56

Section K1

Michael Matheson

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

Michael Matheson

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

Michael Matheson

- 31 Move section K1 to after section 56

Section L1

Michael Matheson

- 32 Leave out section L1

Section 4

Michael Matheson

- 33 In section 4, page 6, line 36, after <19(2)> insert <, or
() section 28(3A) of the 1995 Act>

Section 7

Michael Matheson

- 34 In section 7, page 9, line 23, after <offence> insert <, or
() the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions)>

Section 11

Michael Matheson

- 35 In section 11, page 10, line 1, after <12A> insert <, or
() the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions)>

Section 12A

Alison McInnes

- 3 In section 12A, page 10, line 21, at end insert—
<(1A) Subsection (1) does not apply where—
(a) a constable believes that the person who is in police custody is under 18 years of age, or
(b) owing to mental disorder, the person who is in police custody appears to a constable to be unable to—
(i) understand sufficiently what is happening, or
(ii) communicate effectively with the police.
(1B) It is irrelevant for the purposes of subsection (1A)(b) whether the person is or is not in receipt of support of the type mentioned in section 33(3).>

Michael Matheson

- 36 In section 12A, page 10, leave out line 23 and insert—
<() is of, or above, the rank of—
(i) inspector, if a constable believes the person to be 18 years of age or over,
(ii) chief inspector, if a constable believes the person to be under 18 years of age, and>

Michael Matheson

- 37 In section 12A, page 11, line 12, after <offence> insert <, or
() the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions)>

Alison McInnes

- 4 In section 12A, page 11, line 12, at end insert—
<() In subsection (1A)(b)—
(a) “mental disorder” has the meaning given in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003,
(b) the reference to the police is to any—
(i) constable, or

- (ii) person appointed as a member of police staff under section 26(1) of the Police and Fire Reform (Scotland) Act 2012.>

Section 9

Michael Matheson

- 38** In section 9, page 12, line 11, after <offence> insert <, or
() the person is detained under section 28(1A) of the 1995 Act (which allows for detention in connection with a breach of bail conditions)>

Section 14

Elaine Murray

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

After section 17

Elaine Murray

- 85** After section 17, insert—
- <Disclosure of information: person released under section 14**
- (1) A constable may disclose qualifying information relating to an alleged offence to a person mentioned in subsection (2) where the conditions in subsection (3) are met.
 - (2) The persons are—
 - (a) a person—
 - (i) against whom, or
 - (ii) against whose property,
the acts which constituted the alleged offence were directed,
 - (b) in the case where the death of a person mentioned in paragraph (a) was (or appears to have been) caused by the alleged offence, a prescribed relative of the person,
 - (c) a person who is likely to give evidence in criminal proceedings which are likely to be instituted against a person in respect of the alleged offence,
 - (d) a person who has given a statement in relation to the alleged offence to a constable.
 - (3) The conditions are that disclosure of the information —
 - (a) is in the public interest or is otherwise likely to promote the safety and wellbeing of a person mentioned in subsection (2), and
 - (b) is authorised by a constable who is of the rank of inspector or above.
 - (4) In this section—

“prescribed” means prescribed by the Scottish Ministers by regulations subject to the negative procedure,

“qualifying information” means information that—

- (a) identifies a person as having been arrested in connection with an alleged offence and subsequently released under section 14, and
 - (b) sets out such information relating to any conditions imposed on the person under section 14(2) as the constable authorising the disclosure considers appropriate.
- (5) The Scottish Ministers may, by regulations subject to the negative procedure, modify the definition of “qualifying information” in subsection (4).>

Section 20

Michael Matheson

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

Section 24

Michael Matheson

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

Michael Matheson

- 42 In section 24, page 22, line 22, at end insert—
- <() A decision to allow the person to be interviewed without a solicitor present by virtue of subsection (4) may be taken only by a constable who—
- (a) is of the rank of sergeant or above, and
 - (b) has not been involved in investigating the offence about which the person is to be interviewed.>

Section 25

Michael Matheson

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

Section 26

Michael Matheson

- 44 In section 26, page 23, line 29, at end insert—
- <() For the avoidance of doubt, nothing in this section is to be taken to mean that a constable cannot put questions to the person in relation to any other matter.>

Section 30

Michael Matheson

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

Michael Matheson

- 46 In section 30, page 27, line 3, at end insert—
- <() In subsection (5), “an appropriate constable” means a constable who—
- (a) is of the rank of sergeant or above, and
 - (b) has not been involved in the investigation in connection with which the person is in custody.>

Section 32

Michael Matheson

- 47 In section 32, page 28, line 26, at end insert—
- <() A decision to refuse or restrict access to a person in custody under subsection (1) or (2) may be taken only by a constable who—
- (a) is of the rank of sergeant or above, and
 - (b) has not been involved in the investigation in connection with which the person is in custody.>

Section 32A

Michael Matheson

- 48 In section 32A, page 29, line 17, at end insert—
- <() A decision to refuse or restrict access to a person in custody under subsection (4)(b) may be taken only by a constable who—
- (a) is of the rank of sergeant or above, and
 - (b) has not been involved in the investigation in connection with which the person is in custody.>

Section 36

Michael Matheson

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

Michael Matheson

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

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

Section 52A

Michael Matheson

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

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

Section 53A

Michael Matheson

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

Section 56

Michael Matheson

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

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

After section 56

Alison McInnes

86 After section 56, insert—

<PART

AGE OF CRIMINAL RESPONSIBILITY

Age of criminal responsibility

In section 41 (age of criminal responsibility) of the 1995 Act, for the word “eight” there is substituted “12”.>

Section 64

Michael Matheson

- 54 Leave out section 64

Section 67

Michael Matheson

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

Section 73

Michael Matheson

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

Michael Matheson

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

Michael Matheson

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

Section 76

Michael Matheson

- 59 In section 76, page 44, line 5, leave out <High Court> and insert <Sheriff Appeal Court>

Michael Matheson

- 60 In section 76, page 44, line 8, leave out <High Court> and insert <Sheriff Appeal Court>

Michael Matheson

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

Section 80

Michael Matheson

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

Section 81

Michael Matheson

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

After section 81

Michael Matheson

- 64 After section 81, insert—

<Courts reform: spent provisions

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

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

Section 82A

Mary Fee

- 87 Leave out section 82A

After section 82B

Michael Matheson

- 65 After section 82B, insert—

<CHAPTER

SUPPORT FOR VULNERABLE PERSONS

Meaning of appropriate adult support

- (1) For the purposes of this Chapter, “appropriate adult support” means—
 - (a) support of the sort mentioned in subsection (3) of section 33 that is provided to a person about whom intimation has been sent under subsection (2) of that section, and
 - (b) such other support for vulnerable persons in connection with a criminal investigation or criminal proceedings as the Scottish Ministers specify by regulations.
- (2) In regulations under subsection (1)(b), the Scottish Ministers may, in particular, specify support by reference to—
 - (a) the purpose it is to serve,
 - (b) the description of vulnerable persons to whom it is to be available, and
 - (c) the circumstances in which it is to be available.

- (3) For the purposes of this section—
- “vulnerable person” means a person who, owing to mental disorder, is—
- (a) unable to understand sufficiently what is happening, or
 - (b) communicate effectively,
- in the context of a criminal investigation or criminal proceedings,
- “mental disorder” has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003.
- (4) The Scottish Ministers may by regulations amend the definitions of “vulnerable person” and “mental disorder” in subsection (3) for the purpose of making them consistent with (respectively) subsections (1)(c) and (5)(a) of section 33.>

Michael Matheson

66 After section 82B, insert—

<Responsibility for ensuring availability of appropriate adults

The Scottish Ministers may by regulations—

- (a) confer on a person the function of ensuring that people are available to provide appropriate adult support—
 - (i) throughout Scotland, or
 - (ii) in a particular part of Scotland, and
- (b) make provision about how that function may or must be discharged.>

Michael Matheson

67 After section 82B, insert—

<Assessment of quality of appropriate adult support

The Scottish Ministers may by regulations—

- (a) confer on a person the functions of—
 - (i) assessing the quality of whatever arrangements may be in place to ensure that people are available to provide appropriate adult support, and
 - (ii) assessing the quality of any appropriate adult support that is provided, and
- (b) make provision about how those functions may or must be discharged.>

Michael Matheson

68 After section 82B, insert—

<Training for appropriate adults

The Scottish Ministers may by regulations—

- (a) confer on a person the function of—
 - (i) giving to people who provide, or wish to provide, appropriate adult support training in how to provide that support,

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

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

Michael Matheson

69 After section 82B, insert—

<Recommendations from quality assessor and training provider

- (1) A person upon whom a function has been conferred by virtue of section (*Assessment of quality of appropriate adult support*) or (*Training for appropriate adults*) may—
 - (a) make to a provider of appropriate adult support recommendations about the way that appropriate adult support is provided,
 - (b) make to the Scottish Ministers recommendations about the exercise of their powers under section 53B and the provisions of this Chapter.
- (2) A provider of appropriate adult support must have regard to any recommendation made to it under subsection (1)(a).
- (3) The Scottish Ministers must have regard to any recommendation made under subsection (1)(b).
- (4) In this section, “a provider of appropriate adult support” means a person upon whom the function of ensuring that people are available to provide appropriate adult support has been conferred by virtue of section (*Responsibility for ensuring availability of appropriate adults*).>

Michael Matheson

70 After section 82B, insert—

<Duty to ensure quality assessment takes place

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

Michael Matheson

71 After section 82B, insert—

<Elaboration of regulation-making powers under this Chapter

- (1) A power under this Chapter to confer a function on a person by regulations may be exercised so as to confer the function, or aspects of the function, on more than one person.
- (2) A power under this Chapter to make provision by regulations about how a function may or must be discharged may, in particular, be exercised so as to—
 - (a) require or allow the person discharging the function to enter into a contract with another person,

- (b) require the person discharging the function to have regard to any guidance about the discharge of the function issued by the Scottish Ministers.
- (3) The powers under this Chapter to make regulations may be exercised so as to—
 - (a) make such provision as the Scottish Ministers consider necessary or expedient in consequence of, or for the purpose of giving full effect to, any regulations made in exercise of a power under this Chapter,
 - (b) modify any enactment (including this Act),
 - (c) make different provision for different purposes.>

Michael Matheson

72 After section 82B, insert—

<Procedure for making regulations under this Chapter

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

Michael Matheson

73 After section 82B, insert—

<Other powers of Ministers unaffected

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

Mary Fee

88 After section 82B, insert—

<CHAPTER

NOTIFICATION IF PARENT OF UNDER-18 IMPRISONED

Child’s named person to be notified

- (1) This section applies where a person is admitted to any penal institution for imprisonment or detention arising from—
 - (a) anything done by a court of criminal jurisdiction (including the imposition of a sentence, the making of an order or the issuing of a warrant),
 - (b) anything done under section 17 or 17A of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as to the recall of a prisoner),
 - (c) anything done by virtue of the Extradition Act 2003 (particularly section 9(2) or 77(2) of that Act), or
 - (d) the operation of any other enactment concerning criminal matters (including penal matters).
- (2) The Scottish Ministers must ensure that the person is asked—
 - (a) whether the person is a parent of a child, and

- (b) if the person claims to be a parent of a child, to—
 - (i) state the identity of the child, and
 - (ii) give information enabling the identity of the service provider in relation to the child to be ascertained.
- (3) If the identity of the service provider can be ascertained by or on behalf of the Scottish Ministers without undue difficulty in light of anything disclosed by the person, they must ensure that the service provider is notified of—
 - (a) the fact of the person’s admission to the penal institution,
 - (b) what has been stated by the person about the identity of the child, and
 - (c) such other matters disclosed by the person as appear to them to be relevant for the purpose of the exercise of the named person functions with respect to the child.
- (4) In addition, the Scottish Ministers must ensure that the service provider is notified of anything disclosed by the person about the identity of any other child—
 - (a) of whom the person claims to be a parent, and
 - (b) the service provider in relation to whom is unknown to them.
- (5) No requirement is imposed by subsection (2) if the person’s admission to the penal institution is on—
 - (a) returning after—
 - (i) any unauthorised absence, or
 - (ii) any temporary release in accordance with prison rules, or
 - (b) being transferred from—
 - (i) any other penal institution,
 - (ii) any secure accommodation in which the person has been kept, or
 - (iii) any hospital in which the person has been detained, so as to be given medical treatment for a mental disorder, by virtue of Part VI of the 1995 Act or the Mental Health (Care and Treatment) (Scotland) Act 2003.
- (6) Each of the requirements imposed by subsections (2) to (4) is to be fulfilled without unnecessary delay.
- (7) The references in subsections (2) to (4) to the Scottish Ministers are to them in their exercise of functions in connection with the person’s imprisonment or detention in the penal institution.
- (8) The references in subsections (3) and (4) to disclosure by the person are to such disclosure in response to something asked under subsection (2).>

Mary Fee

89 After section 82B, insert—

<Definition of certain expressions

In this Chapter—

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

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

“parent” includes any person who—

- (a) is a guardian of a child,
- (b) is liable to maintain, or has care of, a child, or
- (c) has parental responsibilities in relation to a child (as construed by reference to section 1(1) to (3) of the Children (Scotland) Act 1995),

“penal institution” means—

- (a) any prison, other than—
 - (i) a naval, military or air force prison, or
 - (ii) any legalised police cells (within the meaning of section 14(1) of the Prisons (Scotland) Act 1989),
- (b) any remand centre (within the meaning of section 19(1)(a) of the Prisons (Scotland) Act 1989), or
- (c) any young offenders institution (within the meaning of section 19(1)(b) of the Prisons (Scotland) Act 1989),

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

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

“service provider” in relation to a child has the meaning given by section 32 of the Children and Young People (Scotland) Act 2014.>

Section 86

Michael Matheson

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

Michael Matheson

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

Michael Matheson

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

After section 86A

Margaret Mitchell

Supported by: Alison McInnes

90 After section 86A, insert—

<CHAPTER

RECOVERY OF DOCUMENTS IN SEXUAL OFFENCE CASES: LEGAL REPRESENTATION

Recovery of certain documents in sexual offence cases: legal representation

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

- “(4A) Subsection (4B) applies where the application for an order under subsection (1)—
- (a) is made in connection with the trial of a person charged with an offence to which section 288C of this Act applies, and
 - (b) seeks the recovery of any psychiatric, psychological or medical records of the complainer.
- (4B) Before such an order is granted, the court must ensure that the complainer—
- (a) is informed of the right of the complainer—
 - (i) to seek legal advice,
 - (ii) to appoint a legal representative, and
 - (b) is given the opportunity—
 - (i) to seek such advice,
 - (ii) to appoint such a representative.
- (4C) Where the complainer appoints a legal representative—
- (a) a copy of the application must be sent to the legal representative, and
 - (b) the legal representative must be given an opportunity to—
 - (i) submit written evidence on the matters set out in the application,
 - (ii) represent the complainer at any hearing in relation to the application.
- (4D) The Scottish Ministers must by regulations make provision for fees incurred by a legal representative appointed under subsection (4B) to be paid out of the Scottish Legal Aid Fund.
- (4E) In subsections (4A) to (4C), “complainer” means the person against whom the offence which is the subject of the criminal proceedings to which the application for an order under subsection (1) relates is alleged to have been committed.”>

Section 90

Michael Matheson

- 77 In section 90, page 54, line 8, leave out subsection (1) and insert—
- <(1) The following provisions come into force on the day after Royal Assent—
- (a) sections E1 and G1 to K1,
 - (b) this Part.>

Alison McInnes

- 91 In section 90, page 54, line 8, at end insert—
- <() Section (*Age of criminal responsibility*) comes into force on the day 18 months after Royal Assent.>

Schedule A1

Michael Matheson

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

Schedule 1

Michael Matheson

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

Michael Matheson

- 80 In schedule 1, page 61, line 11, at end insert—
- <In section 28—
- (a) after subsection (1) there is inserted—
“(1ZA)Where—
 - (a) a constable who is not in uniform arrests a person under subsection (1),
and
 - (b) the person asks to see the constable’s identification,
the constable must show identification to the person as soon as reasonably practicable.”,
 - (b) after subsection (3) there is inserted—
“(3A) If—
 - (a) a person is in custody only by virtue of subsection (1) or (1A), and
 - (b) in the opinion of a constable there are no reasonable grounds for suspecting that the person has broken, or is likely to break, a condition imposed on the person’s bail,
the person must be released from custody immediately.

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

Michael Matheson

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

<After section 28 there is inserted—

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

- (1) Section 7(2) of the Criminal Justice (Scotland) Act 2015 (“the 2015 Act”) does not apply to an accused who has been arrested under section 28(1) of this Act.
- (2) The following provisions of the 2015 Act apply in relation to a person who is to be brought before a court under section 28(2) or (3) of this Act as they apply in relation to a person who is to be brought before a court in accordance with section 18(2) of the 2015 Act—
 - (a) section 18A,
 - (b) section 18B,
 - (c) section 18C.
- (3) In relation to a person who is to be brought before a court under section 28(2) or (3) of this Act, the 2015 Act applies as though—
 - (a) in section 18B(2)—
 - (i) for paragraph (c) there were substituted—

“(c) that the person is to be brought before the court under section 28 of the 1995 Act in order for the person’s bail to be considered.”, and
 - (ii) paragraph (d) were omitted,
 - (b) in section 18C—
 - (i) in subsection (3)(c), for the words “after being officially accused” there were substituted “after being informed that the person is to be brought before a court under section 28(2) or (3) of the 1995 Act”, and
 - (ii) in subsection (4), for paragraph (c) there were substituted—

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

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

Michael Matheson

- 82** In schedule 1, page 61, line 31, leave out <section 48(5)(b) of> and insert <paragraph 6(5)(b) of schedule A1 to>

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