

Criminal Justice (Scotland) Bill

2nd Groupings of Amendments for Stage 2

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

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

Groupings of amendments

Publication of prosecutorial test

69

Aggravations as to people trafficking

70, 71, 72

Participation of detained person in proceedings through TV link

73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 101

Electronic proceedings

83

Authorisation under Part III of Police Act 1997

84

Evidence relating to sexual offence: legal representation

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Police Negotiating Board for Scotland

85, 86, 87, 88, 89, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 90

Police powers to stop and search

50, 51, 52, 53

Power to arrest without warrant: “offences not punishable by imprisonment” and “not in interests of justice”

111, 112

Provision of information to arrested person

113, 114, 10, 11

Release from police custody prior to arrival at police station

115, 118

Drafting and other minor amendments

116, 117, 121, 192, 193, 194, 205, 221

Information to be given if sexual offence

119, 148

Requirements in relation to and rights of under 18s

120, 150, 151, 152, 55, 56, 167, 57, 58, 168, 59, 60, 170, 171, 172, 173, 174, 175, 176, 177, 178, 61, 179, 180, 181, 62, 182, 183, 63, 184, 185, 186, 64, 187, 188, 38, 32, 65, 196, 197, 222

Notes on amendments in this group

Amendment 58 pre-empts amendment 168

Amendment 63 pre-empts amendments 184 and 185

Amendment 38 pre-empts amendment 32

Keeping person in custody; period, authorisation, review etc.

122, 123, 12, 124, 125, 13, 126, 127, 128, 129, 130, 131, 132, 133, 14, 134, 15, 16, 135, 136, 137, 17, 138, 139, 140, 141

Arrest and custody of person with responsibility for child

39, 40, 110, 41, 42, 43, 44, 45, 46

Release on conditions or on undertaking: when and for how long conditions may be imposed

18, 142, 19, 145, 20, 147, 21, 22, 23, 24, 25, 26, 27, 154, 160, 161, 162, 163, 164

Notes on amendments in this group

Amendment 18 pre-empts amendment 142

Amendment 145 pre-empts amendment 20

Amendment 147 pre-empts amendment 21

Release on conditions or on undertaking: purposes for which conditions may be imposed and nature of conditions etc.

47, 143, 146, 155, 48, 156, 157

Notes on amendments in this group

Amendment 155 pre-empts amendment 48

Breach of liberation condition

144, 158, 159, 198, 199, 200, 201, 202, 203, 204

Time at which officially accused person to be brought before court

149

Circumstances where person may not be released without undertaking

153

Provision of information prior to interview

28, 165, 166

Circumstances in which interview may take place without solicitor present

29

Persons unable to understand what is happening or communicate effectively (including powers to make further provision)

30, 31, 169, 33, 189, 34, 190, 191, 220

Notes on amendments in this group

Amendment 31 pre-empts amendment 169

Amendment 34 pre-empts amendment 190

Care of drunken persons

195

Disclosure of information relating to person not officially accused

35, 36

Modification of enactments in connection with Part 1

206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216

Power to apply Part 1

217, 218, 219

Meaning of arrest

37

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Amendments in debating order

Publication of prosecutorial test

Michael Matheson

69 Before section 83, insert—

<CHAPTER

PUBLICATION OF PROSECUTORIAL TEST

Publication of prosecutorial test

- (1) The Lord Advocate must make available to the public a statement setting out in general terms the matters about which a prosecutor requires to be satisfied in order to initiate, and continue with, criminal proceedings in respect of any offence.
- (2) The reference in subsection (1) to a prosecutor is to one within the Crown Office and Procurator Fiscal Service.>

Aggravations as to people trafficking

Michael Matheson

70 Leave out section 83

Michael Matheson

71 Leave out section 84

Michael Matheson

72 Leave out section 85

Participation of detained person in proceedings through TV link

Michael Matheson

73 In section 86, page 39, line 24, leave out <, a detained person is to participate in a specified> and insert <at any time before or at a specified hearing, a detained person is to participate in the>

Michael Matheson

74 In section 86, page 39, line 32, leave out <an ad hoc hearing held> and insert <any proceedings at a specified hearing or otherwise in the case>

Michael Matheson

75 In section 86, page 39, line 35, leave out <a specified hearing or such an ad hoc hearing> and insert <any specified hearing or other proceedings>

Michael Matheson

76 In section 86, page 39, line 37, after <hearing> insert <or other proceedings>

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Michael Matheson

77 In section 86, page 40, line 1, after <hearing> insert <or other proceedings>

Michael Matheson

78 In section 86, page 40, line 6, leave out <a specified hearing> insert <any specified hearing or other proceedings>

Michael Matheson

79 In section 86, page 40, line 9, after <charge> insert <on any complaint or indictment>

Michael Matheson

80 In section 86, page 40, line 16, leave out from beginning to <where> in line 21 and insert—
<(3) The court may postpone a specified hearing to a later day if>

Michael Matheson

81 In section 86, page 40, leave out lines 26 to 28

Michael Matheson

82 In section 86, page 40, line 28, at end insert—

<Effect of postponement

- (1) Except where a postponement under section 288I(3) is while section 18(2) of the Criminal Justice (Scotland) Act 2015 applies to a detained person, the following do not count towards any time limit arising in such a person's case if such a postponement in the case is to the next day on which the court is sitting—
 - (a) that next day,
 - (b) any intervening Saturday, Sunday or court holiday.
- (2) Even while section 18(2) of the Criminal Justice (Scotland) Act 2015 applies to a detained person, that section does not prevent a postponement under section 288I(3) in the person's case.
- (3) In section 288I and this section, “postpone” includes adjourn.>

Michael Matheson

101 In section 18, page 9, line 6, at end insert <(by virtue of a determination by the court that the person is to do so by such means)>

Electronic proceedings

Michael Matheson

83 After section 86, insert—

<Electronic proceedings

- (1) In section 305 (Acts of Adjournal) of the 1995 Act, after subsection (1) there is inserted—

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- “(1A) Subsection (1) above extends to making provision by Act of Adjournal for something to be done in electronic form or by electronic means.”.
- (2) These provisions of the 1995 Act are repealed—
- (a) in section 141—
 - (i) subsection (3A),
 - (ii) in subsection (5), the words “(including a legible version of an electronic communication)”,
 - (iii) subsection (5ZA),
 - (iv) in subsection (5A), paragraph (b) together with the word “or” immediately preceding it,
 - (v) subsections (6A), (7A) and (7B),
 - (b) section 303B together with the italic heading immediately preceding it,
 - (c) section 308A.
- (3) In the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, section 42 is repealed.>

Authorisation under Part III of Police Act 1997

Michael Matheson

- 84 After section 86, insert—

<CHAPTER

AUTHORISATION UNDER PART III OF THE POLICE ACT 1997

Authorisation of persons other than constables

In section 108 (interpretation of Part III) of the Police Act 1997, after subsection (1) there is inserted—

- “(1A) A reference in this Part to a staff officer of the Police Investigations and Review Commissioner is to any person who—
- (a) is a member of the Commissioner’s staff appointed under paragraph 7A of schedule 4 to the Police, Public Order and Criminal Justice (Scotland) Act 2006, or
 - (b) is a member of the Commissioner’s staff appointed under paragraph 7 of that schedule to whom paragraph 7B(2) of that schedule applies.”.>

Evidence relating to sexual offence: legal representation

Margaret Mitchell

- 105 After section 86, insert—

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<CHAPTER

EVIDENCE RELATING TO SEXUAL OFFENCES: LEGAL REPRESENTATION

Evidence relating to sexual offences: legal representation

In section 275 (exception to restrictions under section 274) of the 1995 Act, after subsection (5), insert—

- “(5A) Where an application under subsection (1) is made, the complainer must in respect of that application—
- (a) be informed of the right of the complainer—
 - (i) to seek legal advice,
 - (ii) to appoint a legal representative,
 - (b) be given the opportunity—
 - (i) to seek such advice,
 - (ii) to appoint such a representative.
- (5B) 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 in accordance with subsection (3),
 - (ii) represent the complainer at any hearing in relation to the application.
- (5C) The Scottish Ministers must by regulations make provision for fees incurred by a legal representative appointed under subsection (5B) to be paid out of the Scottish Legal Aid Fund.”>

Police Negotiating Board for Scotland

Michael Matheson

- 85 In section 87, page 42, line 12, leave out <a time period> and insert <or extend a time limit>

Michael Matheson

- 86 In section 87, page 42, leave out line 18

Michael Matheson

- 87 In section 87, page 42, line 27, at end insert—

<55CA Steps following arbitration

- (1) If representations under section 55B(1) are made in terms settled through arbitration in accordance with the PNBS’s constitution, the Scottish Ministers must take all reasonable steps appearing to them to be necessary for giving effect to those representations.
- (2) However, this—

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- (a) requires the Scottish Ministers to take such steps only in qualifying cases (see paragraph 4C(2) of schedule 2A),
- (b) does not require the Scottish Ministers—
 - (i) to take such steps in relation to representations that are no longer being pursued by the PNBS, or
 - (ii) where such steps would comprise or include the making of regulations under section 48, to make regulations under that section more than once with respect to the same representations.>

Michael Matheson

- 88 In section 87, page 42, line 34, leave out from <subsection> to end of line and insert <this Chapter, “reporting year” is as defined in the PNBS’s constitution.”.>

Michael Matheson

- 89 In section 87, page 43, line 3, at end insert—
<() In section 125 (subordinate legislation) of the Police and Fire Reform (Scotland) Act 2012, after subsection (3) there is inserted—
“(3A) Regulations under paragraph 4(6) of schedule 2A are subject to the affirmative procedure if they include provisions of the kind mentioned in paragraph 4B(2) or 4C(2) of that schedule.”.>

Michael Matheson

- 91 In schedule 3, page 50, leave out line 6

Michael Matheson

- 92 In schedule 3, page 50, line 12, leave out <and deputy chairperson>

Michael Matheson

- 93 In schedule 3, page 50, line 18, leave out <or deputy chairperson>

Michael Matheson

- 94 In schedule 3, page 50, line 21, at end insert—
<Temporary chairperson
(1) The PNBS may have a temporary chairperson if (for the time being)—
 - (a) there is no chairperson, or
 - (b) the chairperson is unavailable to act.(2) A reference in this Chapter to the chairperson is to be read, where appropriate to do so by virtue of sub-paragraph (1), as meaning or including (as the context requires) the temporary chairperson.>

Michael Matheson

- 95 In schedule 3, page 50, line 24, leave out <chairperson or deputy chairperson> and insert <the chairperson>

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Michael Matheson

- 96 In schedule 3, page 50, line 34, leave out from second <the> to end of line 35 and insert <consensus to be reached among the members of the PNBS on the terms of representations to be made under section 55B(1) or 55C(1).>

Michael Matheson

- 97 In schedule 3, page 51, leave out lines 1 and 2 and insert—
- <() The constitution—
 - (a) may require a dispute on representations to be made under section 55B(1) to be submitted to arbitration by agreement among the members to do so, and must not prevent such a dispute from being submitted to arbitration on such agreement (except prevention by way of limitation as allowed below),
 - (b) may—
 - (i) authorise the chairperson to submit such a dispute to arbitration without such agreement,
 - (ii) limit how often within a reporting year such a dispute can be submitted to arbitration (including limitation framed by reference to particular matters or circumstances).>

Michael Matheson

- 98 In schedule 3, page 51, line 18, at end insert—
- <(6) The constitution, or any revision of it, has effect only when brought into effect by the Scottish Ministers by regulations.>

Michael Matheson

- 99 In schedule 3, page 51, line 18, at end insert—
- <Process of arbitration*
- 4A(1) Sub-paragraph (2) applies where—
 - (a) a dispute is submitted to arbitration in accordance with the constitution, and
 - (b) no arbitration agreement relating to the dispute is in place.
 - (2) A document submitting the dispute to arbitration is deemed to be an arbitration agreement.
 - (3) For the application of the Arbitration (Scotland) Act 2010, a reference in this paragraph to an arbitration agreement is to such an agreement as defined by section 4 of that Act.
 - 4B(1) Sub-paragraph (2) applies for the purpose of arbitration in accordance with the constitution (whether such arbitration arises by reason of a real or deemed arbitration agreement).
 - (2) Regulations under paragraph 4(6) may include provisions disapplying or modifying the mandatory rules in schedule 1 to the Arbitration (Scotland) Act 2010.
 - 4C(1) Sub-paragraph (2) applies for the purpose of the operation of section 55CA.

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- (2) Regulations under paragraph 4(6) may include provisions specifying, by reference to particular matters or circumstances, what are qualifying cases.>

Michael Matheson

- 100 In schedule 3, page 51, line 21, leave out <and deputy chairperson>

Michael Matheson

- 90 After section 87, insert—

<Consequential and transitional

- (1) In connection with section 87—
- (a) in schedule 1 to the Freedom of Information (Scotland) Act 2002, after paragraph 50A there is inserted—
- “50B The Police Negotiating Board for Scotland.”,
- (b) in schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003, at the appropriate place under the heading referring to offices there is inserted—
- “Chairperson of the Police Negotiating Board for Scotland”.
- (2) On the coming into force of section 87—
- (a) a person then holding office as the chairman of the Police Negotiating Board for the United Kingdom by virtue of section 61(2) of the Police Act 1996 is to be regarded as if appointed as the chairperson of the Police Negotiating Board for Scotland under paragraph 2(2) of schedule 2A to the Police and Fire Reform (Scotland) Act 2012,
- (b) any agreements then extant within or involving the Police Negotiating Board for the United Kingdom (so far as relating to the Police Service of Scotland) of the kind for which Chapter 8A of Part 1 of the Police and Fire Reform (Scotland) Act 2012 includes provision are to be regarded as if made as agreements within or involving the Police Negotiating Board for Scotland by virtue of that Chapter.>

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