6th Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

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

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

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).>

After section 71

Robert Brown

551 After section 71, insert—

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

(1) The Scottish Ministers may make regulations requiring every Health Board to—

(a) collect information on criminal injuries treated in or otherwise coming to the attention of relevant hospitals, and

(b) provide that information to the relevant chief constable.

(2) The Scottish Ministers must make the first regulations under subsection (1) before the expiry of 12 months beginning with the day of Royal Assent.

(3) Regulations under subsection (1) must include provision that any information provided to a relevant chief constable must be in such a form that persons who have sustained criminal injuries cannot be identified.
(4) Regulations under subsection (1) may include provision about—
(a) the criminal injuries about which information is to be collected (including by
reference to the offences involved),
(b) the information on such injuries which is to be collected (including information as
to the places at which, and circumstances in which, those injuries are sustained),
(c) the types of hospitals from which such information is to be collected (including
the departments within such hospitals from which information is to be collected),
(d) the times at which and manner in which such information is to be provided to
relevant chief constables.

(5) In this section—
“criminal injuries” means injuries which are, or are suspected of having been,
directly attributable to the commission of an offence involving violence,
“Health Board” means a board constituted by order under section 2(1)(a) of the
National Health Service (Scotland) Act 1978 (c.29),
“relevant chief constable” means the chief constable for the police force whose
area comprises or includes all or part of the Health Board’s area,
“relevant hospitals” means hospitals the administration of which is the Health
Board’s responsibility.

Section 72

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

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

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

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

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

Kenny MacAskill
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—

<(aC) 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—

3
(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;”.

Section 77

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

525 In section 77, page 98, line 22, at end insert—
<( ) After that section insert—
“10A Authorisation of surveillance: joint surveillance operations

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

Kenny MacAskill

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

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

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

Kenny MacAskill

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

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

Kenny MacAskill

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

Section 78

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

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

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

Kenny MacAskill

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

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

Kenny MacAskill

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

Section 79

Kenny MacAskill

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

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

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

Kenny MacAskill

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

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.
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.”.

11
(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 85

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

555 In section 85, page 104, line 10, leave out subsection (2)
Kenny MacAskill

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

<(3) In sections (Duty to disclose after conclusion of proceedings at first instance) to (Review of ruling under section (Application by appellant for ruling on disclosure)) “information”, in relation to appellate proceedings, includes material of any kind given to or obtained by the prosecutor in connection with the appellate proceedings or the earlier proceedings.

(4) In subsection (3)—

“appellate proceedings” has the meaning given by section (Sections (Duty to disclose after conclusion of proceedings at first instance) to (Review of ruling under section (Application by appellant for ruling on disclosure)): interpretation),

“earlier proceedings” has the meaning given in section (Duty to disclose after conclusion of proceedings at first instance)(5).>  

Section 86

Kenny MacAskill

557 Leave out section 86 and insert—

<Provision of information to prosecutor: solemn cases

(1) This section applies where in a prosecution—

(a) an accused appears for the first time on petition, or

(b) an accused appears for the first time on indictment (not having appeared on petition in relation to the same matter).

(2) As soon as practicable after the appearance, the investigating agency must provide the prosecutor with details of all the information that may be relevant to the case for or against the accused that the agency is aware of that was obtained (whether by the agency or otherwise) in the course of investigating the matter to which the appearance relates.

(3) As soon as practicable after being required to do so by the prosecutor, the investigating agency must provide the prosecutor with any of that information that the prosecutor specifies in the requirement.

(4) In this section, “investigating agency” means—

(a) a police force, or

(b) such other person who—

(i) engages (to any extent) in the investigation of crime or sudden deaths, and

(ii) submits reports relating to those investigations to the procurator fiscal, as the Scottish Ministers may prescribe by regulations.>

Section 87

Kenny MacAskill

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

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

<( ) As soon as practicable after becoming aware of the further information, the investigating agency must provide the prosecutor with details of it.

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

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

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

Section 88

Kenny MacAskill

563 Leave out section 88

After section 88

Kenny MacAskill

564 After section 88, insert—

<Provision of information to prosecutor: summary cases

(1) This section applies where a plea of not guilty is recorded against an accused charged on summary complaint.

(2) As soon as practicable after the recording of the plea, the investigating agency must inform the prosecutor of the existence of all the information that may be relevant to the case for or against the accused that the agency is aware of that was obtained (whether by the agency or otherwise) in the course of investigating the matter to which the plea relates.

(3) As soon as practicable after being required to do so by the prosecutor, the investigating agency must provide the prosecutor with any of that information that the prosecutor specifies in the requirement.>

Kenny MacAskill

565 After section 88, insert—
Continuing duty of investigating agency: summary cases

(1) This section applies where—

(a) an investigating agency has complied with section (Provision of information to prosecutor: summary cases)(2) in relation to an accused, and

(b) during the relevant period the investigating agency becomes aware that further information that may be relevant to the case for or against the accused has been obtained (whether by the agency or otherwise) in the course of investigating the accused’s case.

(2) As soon as practicable after becoming aware of the further information, the investigating agency must inform the prosecutor of the existence of the information.

(3) As soon as practicable after being required to do so by the prosecutor, the investigating agency must provide the prosecutor with any of that further information that the prosecutor specifies in the requirement.

(4) In this section, “relevant period” means the period—

(a) beginning with the investigating agency’s compliance with section (Provision of information to prosecutor: summary cases)(2) in relation to the accused, and

(b) ending with the agency’s receiving notice from the prosecutor of the conclusion of the proceedings against the accused.

(5) For the purposes of subsection (4), proceedings against an accused are to be taken to be concluded if—

(a) a plea of guilty is recorded against the accused,

(b) the accused is acquitted,

(c) the proceedings against the accused are deserted simpliciter,

(d) the accused is convicted and does not appeal against the conviction before the expiry of the time allowed for such an appeal,

(e) the proceedings are deserted pro loco et tempore for any reason and no further trial diet is appointed, or

(f) the complaint falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation.

Section 89

Kenny MacAskill

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

Kenny MacAskill

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

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

Bill Aitken

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

Kenny MacAskill

568 In section 89, page 107, line 1, leave out from beginning to <applies> in line 2 and insert—

<(b) disclose to the accused the information to which subsection (3) applies.>

(3) This subsection applies to information>

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

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

Bill Aitken

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

After section 89

Kenny MacAskill

573 After section 89, insert—

<Disclosure of other information: solemn cases>

(1) This section applies where by virtue of subsection (2)(b) of section 89 the prosecutor is required to disclose information to an accused who falls within paragraph (a) or (b) of subsection (1) of that section.

(2) As soon as practicable after complying with the requirement, the prosecutor must disclose to the accused details of any information which the prosecutor is not required to disclose under section 89(2)(b) but which may be relevant to the case for or against the accused.

(3) The prosecutor need not disclose under subsection (2) details of sensitive information.
(4) In subsection (3), “sensitive”, in relation to an item of information, means that if it were to be disclosed there would be a risk of—
(a) causing serious injury, or death, to any person,
(b) obstructing or preventing the prevention, detection, investigation or prosecution of crime, or
(c) causing serious prejudice to the public interest.

Section 90

Kenny MacAskill

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

Bill Aitken

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

Kenny MacAskill

575 In section 90, page 107, line 24, leave out from beginning to <“the” in line 27 and insert <and
(b) disclose to the accused any information to which section 89(3) applies.
(2A) As soon as practicable after complying with subsection (2), the prosecutor must disclose to the accused details of any other information that may be relevant to the case for or against the accused of which the prosecutor is aware.
(2B) The prosecutor need not disclose under subsection (2A) details of sensitive information.
(2C) In subsection (2)>

Bill Aitken

151 In section 90, page 107, leave out lines 24 to 26 and insert <and
(b) disclose to the accused any such information not already disclosed under section 89(2).>

Kenny MacAskill

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

Bill Aitken

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

Kenny MacAskill

577 In section 90, page 107, line 30, at end insert—
<“sensitive” has the meaning given by section (Disclosure of other information: solemn cases)(4).>
In section 90, page 107, line 31, leave out <this section> and insert <subsection (2C)>

Section 91

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

By virtue of this Part

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

Move section 91 to after section 99

Section 92

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

Bill Aitken

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)>

Move section 92 to after section 96

Section 93

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

Bill Aitken

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

Move section 93 to after section 96

Section 94

In section 94, page 108, line 30, leave out from beginning to <pre-trial> in line 31 and insert—

<(1) This section applies where the accused lodges a defence statement under section 70A of the 1995 Act.
(1A) As soon as practicable after the prosecutor receives a copy of the defence>

Kenny MacAskill

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

Kenny MacAskill

586 In section 94, page 109, line 8, leave out lines 8 to 13 and insert—

<(4) At least 7 days before the trial diet the accused must—
(a) where there has been no material change in circumstances in relation to
the accused’s defence since the last defence statement was lodged, lodge
a statement stating that fact,
(b) where there has been a material change in circumstances in relation to
the accused’s defence since the last defence statement was lodged, lodge
a defence statement.>

Kenny MacAskill

587 In section 94, page 109, line 13, at end insert—

<(4A) If after lodging a statement under subsection (2), (3) or (4) there is a material
change in circumstances in relation to the accused’s defence, the accused must
lodge a defence statement.
(4B) Where subsection (4A) requires a defence statement to be lodged, it must be
lodged before the trial diet begins unless on cause shown the court allows it to
be lodged during the trial diet.>

Kenny MacAskill

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

<( )>

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

591 In section 94, page 109, line 15, at end insert—

<( ) As soon as practicable after lodging a defence statement or a statement under
subsection (4)(a), the accused must send a copy of the statement to the
prosecutor and any co-accused.>
In section 94, page 109, line 20, at end insert—

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

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

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

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

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

(a) the accused lodges a defence statement under section 70A, and

(b) the accused’s defence consists of or includes a special defence.”.>

Leave out section 94

Section 95

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

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

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

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

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

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

In section 95, page 110, line 5, after <receiving> insert <a copy of>
In section 95, page 110, leave out lines 8 to 10 and insert <and

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

Kenny MacAskill

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

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

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

(a) the accused lodges a defence statement under section 95 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 00),

(b) the statement is lodged—

(i) where an intermediate diet is to be held, at or before the diet, or

(ii) where such a diet is not to be held, no later than 10 clear days before the trial diet, and

(c) the accused’s defence consists of or includes a defence to which that subsection applies.”.>

Bill Aitken
Supported by: Robert Brown

Leave out section 95

After section 95

Kenny MacAskill

After section 95, insert—

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

(1) This section applies where the accused lodges a defence statement under section 95 at least 14 days before the trial diet.

(2) At least 7 days before the trial diet the accused must—

(a) where there has been no material change in circumstances in relation to the accused’s defence since the defence statement was lodged, lodge a statement stating that fact,

(b) where there has been a material change in circumstances in relation to the accused’s defence since the defence statement was lodged, lodge a defence statement.

(3) If after lodging a statement under subsection (2) there is a material change in circumstances in relation to the accused’s defence, the accused must lodge a defence statement.

(4) Where subsection (3) requires a defence statement to be lodged, it must be lodged before the trial diet begins unless on cause shown the court allows it to be lodged during the trial diet.
(5) As soon as practicable after lodging a statement under subsection (2)(a) or a defence statement under subsection (2)(b) or (3), the accused must send a copy of the statement concerned to the prosecutor and any co-accused.

(6) As soon as practicable after receiving a copy of a defence statement lodged under subsection (2)(b) or (3) the prosecutor must—
   (a) review all the information that may be relevant to the case for or against the accused of which the prosecutor is aware, and
   (b) disclose to the accused any information to which section 89(3) applies.

(7) In this section, “defence statement” is to be construed in accordance with section 95(2).

Kenny MacAskill

603 After section 95, insert—

Court rulings on disclosure

Application by accused for ruling on disclosure

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

(2) The accused may apply to the court for a ruling on whether section 89(3) applies to the information in question.

(3) An application under subsection (2) is to be made in writing and must set out—
   (a) where the accused is charged with more than one offence, the charge or charges to which the application relates,
   (b) a description of the information in question, and
   (c) the accused’s grounds for considering that section 89(3) applies to the information in question.

(4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.

(5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—
   (a) comply with subsection (3), or
   (b) otherwise disclose any reasonable grounds for considering that section 89(3) applies to the information in question.

(6) At a hearing appointed under subsection (4), the court must give the prosecutor and the accused an opportunity to be heard before determining the application.

(7) On determining the application, the court must—
   (a) make a ruling on whether section 89(3) applies to the information in question or to any part of the information in question, and
(b) where the accused is charged with more than one offence, specify the charge or charges to which the ruling relates.

(8) Except where it is impracticable to do so, the application is to be assigned to the justice of the peace, sheriff or judge who is presiding, or is to preside, at the accused’s trial.

Kenny MacAskill

604 After section 95, insert—

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

(1) This section applies where—

(a) the court has made a ruling under section (Application by accused for ruling on disclosure) that section 89(3) does not apply to an item of information (the “information in question”), and

(b) during the relevant period—

(i) the accused becomes aware of information (the “secondary information”) that was unavailable to the court at the time it made its ruling, and

(ii) the accused considers that, had the secondary information been available to the court at that time, it would have made a ruling that section 89(3) does apply to the information in question.

(2) The accused may apply to the court which made the ruling for a review of the ruling.

(3) An application under subsection (2) is to be made in writing and must set out—

(a) where the accused is charged with more than one offence, the charge or charges to which the application relates,

(b) a description of the information in question and the secondary information, and

(c) the accused’s grounds for considering that section 89(3) applies to the information in question.

(4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.

(5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—

(a) comply with subsection (3), or

(b) otherwise disclose any reasonable grounds for considering that section 89(3) applies to the information in question.

(6) At a hearing appointed under subsection (4), the court must give the prosecutor and the accused an opportunity to be heard before determining the application.

(7) On determining the application, the court may—

(a) affirm the ruling being reviewed, or

(b) recall that ruling and—

(i) make a ruling that section 89(3) applies to the information in question or to any part of the information in question, and

(ii) where the accused is charged with more than one offence, specify the charge or charges to which the ruling relates.
Except where it is impracticable to do so, the application is to be assigned to the justice of the peace, sheriff or judge who dealt with the application for the ruling that is being reviewed.

Nothing in this section affects any right of appeal in relation to the ruling being reviewed.

In this section, “relevant period”, in relation to an accused, means the period—
(a) beginning with the making of the ruling being reviewed, and
(b) ending with the conclusion of proceedings against the accused.

For the purposes of subsection (10), proceedings against the accused are taken to be concluded if—
(a) a plea of guilty is recorded against the accused,
(b) the accused is acquitted,
(c) the proceedings against the accused are deserted *simpliciter*,
(d) the accused is convicted and does not appeal against the conviction before expiry of the time allowed for such an appeal,
(e) the proceedings are deserted *pro loco et tempore* for any reason and no further trial diet is appointed, or
(f) the indictment or complaint falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation.

Kenny MacAskill

After section 95, insert—

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

(1) The prosecutor or the accused may, within the period of 7 days beginning with the day on which a ruling is made under section (Application by accused for ruling on disclosure), appeal to the High Court against the ruling.

(2) Where an appeal is brought under subsection (1), the court of first instance or the High Court may—
(a) postpone any trial diet that has been appointed for such period as it thinks appropriate,
(b) adjourn or further adjourn any hearing for such period as it thinks appropriate,
(c) direct that any period of postponement or adjournment under paragraph (a) or (b) or any part of such period is not to count toward any time limit applying in the case.

(3) In disposing of an appeal under subsection (1), the High Court may—
(a) affirm the ruling, or
(b) remit the case back to the court of first instance with such directions as the High Court thinks appropriate.

(4) This section does not affect any other right of appeal which any party may have in relation to a ruling under section (Application by accused for ruling on disclosure).>
Section 96

Kenny MacAskill

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

Bill Aitken

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

Kenny MacAskill

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

After section 96

Kenny MacAskill

After section 96, insert—

<Disclosure after conclusion of proceedings at first instance>

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

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

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

“appellate proceedings” means—

(a) an appeal under section 106(1)(a) or (f) of the 1995 Act which brings under review an alleged miscarriage of justice,

(b) an appeal under paragraph (b), (ba), (bb), (c), (d), (db) or (dc) of subsection (1) of section 106 of the 1995 Act which brings under review in accordance with subsection (3)(a) of that section an alleged miscarriage of justice,

(c) an appeal under section 175(2)(a) or (d) of the 1995 Act which brings under review an alleged miscarriage of justice,

(d) an appeal under paragraph (b), (c) or (cb) of subsection (2) of section 175 of the 1995 Act which brings under review an alleged miscarriage of justice which is based on the type of miscarriage described in subsection (5) of that section,

(e) an appeal to the Supreme Court against a determination by the High Court of Justiciary of a devolution issue,
(f) an appeal against conviction by bill of suspension under section 191(1) of the 1995 Act,

(g) an appeal against conviction by bill of advocation,

(h) a petition to the nobile officium in respect of a matter arising out of criminal proceedings which brings under review an alleged miscarriage of justice which is based on the existence and significance of new evidence,

(i) an appeal under section 62(1)(b) of the 1995 Act against a finding under section 55(2) of that Act,

(j) the referral to the High Court of Justiciary under section 194B of the 1995 Act of—

   (i) a conviction, or

   (ii) a finding under section 55(2) of that Act.

Kenny MacAskill

609 After section 96, insert—

Duty to disclose after conclusion of proceedings at first instance

(1) This section applies where appellate proceedings are instituted in relation to an appellant.

(2) As soon as practicable after the relevant act the prosecutor must—

   (a) review all information of which the prosecutor is aware that relates to the grounds of appeal in the appellate proceedings, and

   (b) disclose to the appellant any information that falls within subsection (3).

(3) Information falls within this subsection if it is—

   (a) information that the prosecutor was required by virtue of section 89(2)(b) or 90(2)(b) to disclose in the earlier proceedings but did not disclose,

   (b) information to which, during the earlier proceedings, the prosecutor considered paragraph (a) or (b) of section 89(3) did not apply but to which the prosecutor now considers one or both of those paragraphs would apply, or

   (c) information of which the prosecutor has become aware since the disposal of the earlier proceedings that, had the prosecutor been aware of it during those proceedings, the prosecutor would have been required to disclose by virtue of section 89(2)(b) or 90(2)(b).

(4) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the appellant.

(5) In this section—

   "earlier proceedings", in relation to appellate proceedings, means the proceedings to which the appellate proceedings relate,

   "relevant act" means—

   (a) in relation to proceedings of the type mentioned in paragraph (a) or (b) of the relevant definition, the granting under section 107(1)(a) of the 1995 Act of leave to appeal,
(b) in relation to proceedings of the type mentioned in paragraph (c) or (d) of the relevant definition, the granting under section 180(1)(a) or, as the case may be, 187(1)(a) of that Act of leave to appeal,

c) in relation to proceedings of the type mentioned in paragraph (e) of the relevant definition, the granting of leave to appeal by the High Court of Justiciary or, as the case may be, the Supreme Court,

(d) in relation to proceedings of the type mentioned in paragraph (f) of the relevant definition—

(i) if leave to appeal is required, the granting under section 191(2) of that Act of leave to appeal,

(ii) if leave to appeal is not required, service on the prosecutor under the relevant rule of a certified copy of the bill of suspension and the interlocutor granting first order for service,

(e) in relation to proceedings of the type mentioned in paragraph (g) of the relevant definition, service on the prosecutor under the relevant rule of a certified copy of the bill of advocation and the interlocutor granting first order for service,

(f) in relation to proceedings of the type mentioned in paragraph (h) of the relevant definition, service on the prosecutor under the relevant rule of a certified copy of the petition and the interlocutor granting first order for service,

(g) in relation to proceedings of the type mentioned in paragraph (i) of the relevant definition, the lodging of the appeal,

(h) in relation to proceedings of the type mentioned in paragraph (j) of the relevant definition, the lodging of the grounds of appeal by the person to whom the referral relates,

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


Kenny MacAskill

610 After section 96, insert—

<Continuing duty of prosecutor

(1) This section applies where the prosecutor has complied with section (Duty to disclose after conclusion of proceedings at first instance)(2) in relation to an appellant.

(2) During the relevant period, the prosecutor must—

(a) from time to time review all information of which the prosecutor is aware that relates to the grounds of appeal in the appellate proceedings which relate to the appellant, and

(b) disclose to the appellant any information that falls within section (Duty to disclose after conclusion of proceedings at first instance)(3).
(3) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the appellant.

(4) In subsection (2), “relevant period” means the period—
   (a) beginning with the prosecutor’s compliance with section (Duty to disclose after conclusion of proceedings at first instance)(2), and
   (b) ending with the relevant conclusion.

(5) In subsection (4), “relevant conclusion” means—
   (a) in relation to proceedings of the type mentioned in paragraph (a) or (b) of the relevant definition—
      (i) the lodging under section 116(1) of the 1995 Act of a notice of abandonment, or
      (ii) the disposal of the appeal under section 118 of that Act,
   (b) in relation to proceedings of the type mentioned in paragraph (c) or (d) of the relevant definition—
      (i) the disposal of the appeal under section 183(1)(b) to (d) of that Act,
      (ii) the abandonment of the appeal under section 184(1) of that Act,
      (iii) the setting aside of the conviction or sentence or, as the case may be, conviction and sentence under section 188(1) of that Act, or
      (iv) the disposal of the appeal under section 190(1) of that Act,
   (c) in relation to proceedings of the type mentioned in paragraph (e), (f), (g) or (h) of the relevant definition, the disposal or abandonment of the appeal,
   (d) in relation to proceedings of the type mentioned in paragraph (i) of the relevant definition, the disposal of the appeal under section 62(6) of that Act or the abandonment of the appeal,
   (e) in relation to proceedings of the type mentioned in paragraph (j) of the relevant definition—
      (i) if the referral or finding is being treated as if it were an appeal under Part 8 of that Act, the conclusion mentioned in paragraph (a) above,
      (ii) if the referral or finding is being treated as if it were an appeal under Part 10 of that Act, the conclusion mentioned in paragraph (b) above or, where the referral or finding proceeds by way of bill of suspension, bill of advocation or petition to the nobile officium, paragraph (c) above.

(6) In this section, “relevant definition” has the meaning given by section (Duty to disclose after conclusion of proceedings at first instance)(5).>

Kenny MacAskill

611 After section 96, insert—

<Application to prosecutor for further disclosure

(1) This section applies where—
   (a) the prosecutor has complied with section (Duty to disclose after conclusion of proceedings at first instance)(2) in relation to an appellant, and
(b) the appellant lodges a further disclosure request—
   (i) during the preliminary period, or
   (ii) if the court on cause shown allows it, after the preliminary period but before the relevant conclusion.

2) A further disclosure request must set out—
   (a) by reference to the grounds of appeal, the nature of the information that the appellant wishes the prosecutor to disclose, and
   (b) the reasons why the appellant considers that disclosure by the prosecutor of any such information is necessary.

3) As soon as practicable after receiving a copy of the further disclosure request the prosecutor must—
   (a) review any information of which the prosecutor is aware that relates to the request, and
   (b) disclose to the appellant any of that information that falls within section (Duty to disclose after conclusion of proceedings at first instance)(3).

4) In this section—
   “preliminary period”, in relation to the appellate proceedings concerned, means the period beginning with the relevant act and ending with the beginning of the hearing of the appellate proceedings,
   “relevant act” has the meaning given by section (Duty to disclose after conclusion of proceedings at first instance)(5),
   “relevant conclusion” has the meaning given by section (Continuing duty of prosecutor)(5).

Kenny MacAskill

612 After section 96, insert—

<Further duty of prosecutor: conviction upheld on appeal

1) This section applies where—
   (a) in an appeal to the High Court of Justiciary, the High Court upholds the conviction of a person, and
   (b) after the conclusion of the appeal the prosecutor becomes aware of—
      (i) information that the prosecutor was required by virtue of section 89(2)(b) or 90(2)(b) to disclose in the earlier proceedings but did not disclose, or
      (ii) information that falls within section (Duty to disclose after conclusion of proceedings at first instance)(3) which would have related to the grounds of appeal but was not disclosed.

2) As soon as practicable after becoming aware of the information the prosecutor must disclose it to the person.

3) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the person.

4) Nothing in this section requires the prosecutor to carry out a review of information of which the prosecutor is aware.
In this section, “earlier proceedings” has the meaning given by section (Duty to disclose after conclusion of proceedings at first instance)(5).

Kenny MacAskill

After section 96, insert—

<Further duty of prosecutor: convicted persons

(1) This section applies where—

(a) a person has been convicted,

(b) after conviction the prosecutor becomes aware of information that the prosecutor was required by virtue of section 89(2)(b) or 90(2)(b) to disclose in the earlier proceedings but did not disclose, and

(c) section (Further duty of prosecutor: conviction upheld on appeal) does not apply.

(2) As soon as practicable after becoming aware of the information the prosecutor must disclose it to the person.

(3) If the person institutes appellate proceedings in relation to the conviction, the prosecutor need not comply with the duty imposed by subsection (2) during the appropriate period.

(4) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the person.

(5) Nothing in this section requires the prosecutor to carry out a review of information of which the prosecutor is aware.

(6) In this section—

“appropriate period”, in relation to appellate proceedings, means the period beginning with the relevant act and ending with the relevant conclusion,

“earlier proceedings” has the meaning given by section (Duty to disclose after conclusion of proceedings at first instance)(5),

“relevant act” has the meaning given by section (Duty to disclose after conclusion of proceedings at first instance)(5),

“relevant conclusion” has the meaning given by section (Continuing duty of prosecutor)(5).

Kenny MacAskill

After section 96, insert—

<Further duty of prosecutor: appeal against acquittal

(1) This section applies where—

(a) the prosecutor appeals against the acquittal of a person, and

(b) after lodging the appeal the prosecutor becomes aware of information which relates to the appeal and falls within section (Duty to disclose after conclusion of proceedings at first instance)(3).

(2) As soon as practicable after becoming aware of the information the prosecutor must disclose it to the person.
(3) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the person.

(4) The prosecutor ceases to be subject to the duty imposed by subsection (2) on the disposal of the appeal by the High Court of Justiciary.

(5) Nothing in this section requires the prosecutor to carry out a review of information of which the prosecutor is aware.

Kenny MacAskill

615 After section 96, insert—

Court rulings on disclosure: appellate proceedings

Application by appellant for ruling on disclosure

(1) This section applies where the appellant—

(a) has made a further disclosure request under section (Application to prosecutor for further disclosure), and

(b) considers that the prosecutor has failed, in responding to the request, to disclose to the appellant an item of information falling within section (Duty to disclose after conclusion of proceedings at first instance)(3) (the “information in question”).

(2) The appellant may apply to the court for a ruling on whether the information in question falls within section (Duty to disclose after conclusion of proceedings at first instance)(3).

(3) An application under subsection (2) is to be made in writing and must set out—

(a) where the appellant is or was charged with more than one offence, the charge or charges to which the application relates,

(b) a description of the information in question, and

(c) the appellant’s grounds for considering that the information in question falls within section (Duty to disclose after conclusion of proceedings at first instance)(3).

(4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.

(5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—

(a) comply with subsection (3), or

(b) otherwise disclose any reasonable grounds for considering that the information in question falls within section (Duty to disclose after conclusion of proceedings at first instance)(3).

(6) At a hearing appointed under subsection (4), the court must give the prosecutor and the appellant an opportunity to be heard before determining the application.

(7) On determining the application, the court must—

(a) make a ruling on whether the information in question, or any part of the information in question, falls within section (Duty to disclose after conclusion of proceedings at first instance)(3), and
(b) where the appellant is or was charged with more than one offence, specify the charge or charges to which the ruling relates.

(8) In this section, “the court” means the court before which the appellant’s appeal is brought.

(9) Except where it is impracticable to do so, the application is to be assigned to the judges who are to hear the appellant’s appeal.

Kenny MacAskill

After section 96, insert—

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

(1) This section applies where—

(a) the court has made a ruling under section (Application by appellant for ruling on disclosure) that an item of information (the “information in question”) does not fall within section (Duty to disclose after conclusion of proceedings at first instance)(3), and

(b) during the relevant period—

(i) the appellant becomes aware of information (“secondary information”) that was unavailable to the court at the time it made its ruling, and

(ii) the appellant considers that, had the secondary information been available to the court at that time, it would have made a ruling that the information in question does fall within section (Duty to disclose after conclusion of proceedings at first instance)(3).

(2) The appellant may apply to the court which made the ruling for a review of the ruling.

(3) An application under subsection (2) is to be made in writing and must set out—

(a) where the appellant is or was charged with more than one offence, the charge or charges to which the application relates,

(b) a description of the information in question and the secondary information, and

(c) the appellant’s grounds for considering that the information in question falls within section (Duty to disclose after conclusion of proceedings at first instance)(3).

(4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.

(5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—

(a) comply with subsection (3), or

(b) otherwise disclose any reasonable grounds for considering that the information in question falls within section (Duty to disclose after conclusion of proceedings at first instance)(3).

(6) At a hearing appointed under subsection (4), the court must give the prosecutor and the appellant an opportunity to be heard before determining the application.

(7) On determining the application, the court may—

(a) affirm the ruling being reviewed, or
(b) recall that ruling and—
   (i) make a ruling that the information in question, or any part of the
       information in question, falls within section (Duty to disclose after
       conclusion of proceedings at first instance)(3), and
   (ii) where the appellant is or was charged with more than one offence, specify
        the charge or charges to which the ruling relates.

(8) Except where it is impracticable to do so, the application is to be assigned to the judges
    who dealt with the application for the ruling that is being reviewed.

(9) Nothing in this section affects any right of appeal in relation to the ruling being
    reviewed.

(10) In this section, “relevant period”, in relation to an appellant, means the period—
    (a) beginning with the making of the ruling being reviewed, and
    (b) ending with the relevant conclusion.

(11) In subsection (10), “relevant conclusion” has the meaning given by section (Continuing
    duty of prosecutor)(5).>

Section 97

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

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

Kenny MacAskill
618 In section 97, page 111, line 2, at end insert—
    <(4) Subsection (5) applies if the information is contained in—
       (a) a precognition,
       (b) a victim statement,
       (c) a statement given by a person whom the prosecutor does not intend to call to give
           evidence in the proceedings, or
       (d) where the proceedings relating to the accused are summary proceedings, a
           statement given by a person whom the prosecutor intends to call to give evidence
           in the proceedings.
    (5) In complying with the requirement, the prosecutor need not disclose the precognition or,
        as the case may be, statement.
    (6) Subsection (7) applies where the proceedings relating to the accused are solemn
        proceedings and—
        (a) the information is contained in a statement given by a person whom the prosecutor
            intends to call to give evidence in the proceedings, or
(b) the information is contained in a statement and the prosecutor intends to apply under section 259 of the 1995 Act to have evidence of the statement admitted in the proceedings.

(7) In complying with the requirement, the prosecutor must disclose the statement.

Section 98

Kenny MacAskill

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

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)>

Kenny MacAskill

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

<(4A) If despite subsection (2) the accused discloses the information or anything recorded in it other than in accordance with subsection (3), a person to whom information is disclosed must not use or disclose the information or anything recorded in it.

(4B) Subsections (2), (4) and (4A) do not apply in relation to the use or disclosure of information which is in the public domain at the time of the use or disclosure.>

Kenny MacAskill

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

<(  ) a petition to the nobile officium,

(  ) proceedings in the European Court of Human Rights.>

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)>

Kenny MacAskill

622 Leave out section 100

Section 101

Kenny MacAskill

623 Leave out section 101
Section 102

Kenny MacAskill

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

Bill Aitken

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>

Kenny MacAskill

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

Kenny MacAskill

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

Bill Aitken

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 103

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

In section 103, page 113, line 20, leave out <non-disclosure> and insert <section 106>
In section 103, page 113, line 24, after <section> insert <104 or>.

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

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

Section 104

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

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

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

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

(10) On the application of the prosecutor the court may exclude the accused from the hearing appointed under subsection (8).>

Section 105

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

In section 105, page 114, line 30, at end insert—

<(2A) On the application of the prosecutor the court may exclude the accused from the hearing.>

In section 105, page 114, line 31, after <and> insert <, subject to subsection (2A),>
In section 105, page 114, line 31, after <heard> insert <on the applications for the exclusion order and the section 106 order to which it relates>

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

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

In section 106, page 115, line 6, leave out subsection (2) and insert—

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

In section 106, page 115, line 14, leave out from <it> to <prejudice> in line 20 and insert <there would be a real risk of substantial harm or damage>
In section 106, page 115, line 23, leave out <non-disclosure> and insert <section 106>

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

(a) the condition>

In section 106, page 115, line 29, at end insert—

<(4A) If the court considers that subsection (3) (but not subsection (4)) applies, it may make a section 106 order preventing disclosure of the information.

(4B) If the court considers that subsection (4) applies, it may make a section 106 order requiring the information to be disclosed or partly disclosed to the accused in the manner specified in the order.>

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

After section 106

Order preventing or restricting disclosure: application by Secretary of State

(1) The Secretary of State may apply to the relevant court for an order under this section (a “section (Order preventing or restricting disclosure: application by Secretary of State) order”) in relation to the proposed disclosure by the prosecutor to the accused in relevant criminal proceedings of information which the prosecutor—

(a) is required to disclose by virtue of section 89(2)(b), 90(2)(b), 94(1A)(b), 95(3)(b) or (Change in circumstances following lodging of defence statement: summary proceedings)(6)(b), or

(b) intends to disclose otherwise than by virtue of this Part.

(2) If the Secretary of State also makes an application in accordance with subsection (2) or (3) of section (Application for ancillary orders: Secretary of State), the relevant court must comply with subsections (6) and (7) of that section.

(3) Where an application is made under subsection (1), the relevant court must—

(a) consider the item of information to which the application relates,

(b) give the Secretary of State and the prosecutor the opportunity to be heard,
(c) if the application relates to information which the prosecutor is required to disclose by virtue of section 89(2)(b), 90(2)(b), 94(1A)(b), 95(3)(b) or (Change in circumstances following lodging of defence statement: summary proceedings)(6)(b) and a non-attendance order has not been made, give the accused the opportunity to be heard, and

(d) determine—

(i) whether the conditions in subsection (4) apply, and
(ii) if so, whether subsection (5) applies.

(4) The conditions are—

(a) that if the item of information were to be disclosed there would be a real risk of substantial harm or damage to the public interest,

(b) that withholding the item of information would be consistent with the accused’s receiving a fair trial, and

(c) that the public interest would be protected only if a section (Order preventing or restricting disclosure: application by Secretary of State) order of the type mentioned in subsection (6) were to be made.

(5) This subsection applies if the court considers that the item of information could be disclosed or partly disclosed in such a way that—

(a) the condition in paragraph (a) of subsection (4) would not be met, and

(b) the disclosure (or partial disclosure) would be consistent with the accused’s receiving a fair trial.

(6) If the court considers that subsection (4) (but not subsection (5)) applies, it may make a section (Order preventing or restricting disclosure: application by Secretary of State) order preventing disclosure of the information.

(7) If the court considers that subsection (5) applies, it may make a section (Order preventing or restricting disclosure: application by Secretary of State) order requiring the information to be disclosed or partly disclosed to the accused in the manner specified in the order.

(8) For the purposes of subsection (7) the order may in particular specify that—

(a) the item of information be disclosed after removing or obscuring parts of it (whether by redaction or otherwise),

(b) extracts or summaries of the item of information (or part of it) be disclosed instead of the item of information.

(9) If an application is made under this section the relevant criminal proceedings must be adjourned until the application is disposed of or withdrawn.

(10) In this section and sections (Application for ancillary orders: Secretary of State) to (Application for non-attendance order)—

“relevant court” means the court before which relevant criminal proceedings are taking place,

“relevant criminal proceedings” means criminal proceedings relating to the item of information to which the application under this section relates.
After section 106, insert—

**Application for ancillary orders: Secretary of State**

(1) This section applies where the Secretary of State applies for a section (Order preventing or restricting disclosure: application by Secretary of State) order.

(2) If the application under section (Order preventing or restricting disclosure: application by Secretary of State) relates to solemn proceedings, the Secretary of State may also apply to the relevant court for—

   (a) a restricted notification order and a non-attendance order, or
   
   (b) a non-attendance order (but not a restricted notification order).

(3) If the application under section (Order preventing or restricting disclosure: application by Secretary of State) relates to summary proceedings, the Secretary of State may also apply to the court for a non-attendance order.

(4) A restricted notification order is an order under section (Application for restricted notification order and non-attendance order) prohibiting notice being given to the accused of—

   (a) the making of an application for—

      (i) the section (Order preventing or restricting disclosure: application by Secretary of State) order to which the restricted notification order relates,

      (ii) the restricted notification order, and

      (iii) a non-attendance order, and

   (b) the determination of those applications.

(5) A non-attendance order is an order under section (Application for non-attendance order) prohibiting the accused from attending or making representations in proceedings for the determination of the application for the section (Order preventing or restricting disclosure: application by Secretary of State) order to which the non-attendance order relates.

(6) Subsection (7) applies where the Secretary of State applies—

   (a) by virtue of subsection (2)(a) for a restricted notification order and a non-attendance order, or

   (b) by virtue of subsection (2)(a) or (b) for a non-attendance order.

(7) Before determining the application for the section (Order preventing or restricting disclosure: application by Secretary of State) order, the court must—

   (a) in accordance with section (Application for restricted notification order and non-attendance order), determine any application for a restricted notification order and a non-attendance order,

   (b) in accordance with section (Application for non-attendance order), determine any application for a non-attendance order.
Application for restricted notification order and non-attendance order

(1) This section applies where by virtue of section (Application for ancillary orders: Secretary of State)(2)(a) the Secretary of State applies for a restricted notification order and a non-attendance order.

(2) On receiving the application, the relevant court must appoint a hearing to determine whether a restricted notification order should be made.

(3) The accused is not to be notified of—
   (a) the applications for the section (Order preventing or restricting disclosure: application by Secretary of State) order, the restricted notification order and the non-attendance order, or
   (b) the hearing appointed under subsection (2).

(4) The accused is not to be given the opportunity to be heard or be represented at the hearing.

(5) If, after giving the Secretary of State and the prosecutor an opportunity to be heard, the court is satisfied that the conditions in subsection (6) are met, the court may make a restricted notification order.

(6) Those conditions are—
   (a) that disclosure to the accused of the making of the application for the section (Order preventing or restricting disclosure: application by Secretary of State) order would be likely to cause a real risk of substantial harm or damage to the public interest, and
   (b) that, having regard to all the circumstances, the making of a restricted notification order would be consistent with the accused’s receiving a fair trial.

(7) If the court makes a restricted notification order, it must also make a non-attendance order.

(8) If the court refuses to make a restricted notification order, the court must appoint a hearing to determine the application for a non-attendance order.

(9) If after giving the Secretary of State, the prosecutor and, subject to subsection (10), the accused an opportunity to be heard, the court is satisfied that the conditions in subsection (5) of section (Application for non-attendance order) are met, the court may make a non-attendance order under subsection (4) of that section.

(10) On the application of the Secretary of State the court may exclude the accused from the hearing appointed under subsection (8).

Kenny MacAskill

656 After section 106, insert—

Application for non-attendance order

(1) This section applies where by virtue of section (Application for ancillary orders: Secretary of State)(2)(b) the Secretary of State applies for a non-attendance order (but not a restricted notification order).

(2) On receiving the application, the relevant court must appoint a hearing.

(3) On the application of the Secretary of State the court may exclude the accused from the hearing.
(4) If after giving the Secretary of State, the prosecutor and, if not excluded under subsection (3), the accused an opportunity to be heard the court is satisfied that the conditions in subsection (5) are met, the court may make a non-attendance order.

(5) Those conditions are—

(a) that disclosure to the accused of the nature of the information to which the application for the section (Order preventing or restricting disclosure: application by Secretary of State) order relates would be likely to cause a real risk of substantial harm or damage to the public interest, and

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

Section 107

Kenny MacAskill

657 In section 107, page 116, leave out lines 6 and 7 and insert—

<( ) an application for an exclusion order,
( ) an application for a section 106 order,
( ) an application for a restricted notification order,
( ) an application for a non-attendance order,
( ) an application for a section (Order preventing or restricting disclosure: application by Secretary of State) order.>

Kenny MacAskill

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

Kenny MacAskill

659 In section 107, page 116, line 14, at end insert—

<( ) Before deciding whether to appoint special counsel in a non-notification case, the court—
(a) must give the prosecutor an opportunity to be heard, but
(b) must not give the accused an opportunity to be heard.

( ) Before deciding whether to appoint special counsel in a restricted notification case, the court—
(a) must give the prosecutor and the Secretary of State an opportunity to be heard,
(b) must not give the accused an opportunity to be heard.

( ) Before deciding whether to appoint special counsel in any case other than a non-notification case or a restricted notification case, the court must give all the parties an opportunity to be heard.

( ) The prosecutor may appeal to the High Court against a decision of the court not to appoint special counsel in any case.

42
The Secretary of State may appeal to the High Court against a decision of the court not to appoint special counsel in a restricted notification case.

The accused may appeal to the High Court against a decision not to appoint special counsel in any case other than a non-notification case or a restricted notification case.

In this section and section (Role of special counsel)—

“non-notification case” means a case where the court is determining—

(a) an application for a non-notification order,
(b) an application for review of the grant or refusal of a non-notification order,
(c) an appeal relating to such an order,

“restricted notification case” means a case where the court is determining—

(a) an application for a restricted notification order,
(b) an application for review of the grant or refusal of a restricted notification order,
(c) an appeal relating to such an order.

After section 107

Kenny MacAskill

660 After section 107, insert—

<Persons eligible for appointment as special counsel

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

Kenny MacAskill

661 After section 107, insert—

<Role of special counsel

(1) Special counsel’s duty is, in relation to the determination of the relevant application or appeal, to act in the best interests of the accused with a view only to ensuring that the accused receives a fair trial.

(2) Special counsel—

(a) is entitled to see the confidential information, but
(b) must not disclose any of the confidential information to the accused or the accused’s representative (if any).

(3) Special counsel appointed in a non-notification case or a restricted notification case must not—

(a) disclose to the accused or the accused’s representative (if any) the making of the relevant application or appeal, or
(b) otherwise communicate with the accused or the accused’s representative (if any) about the relevant application or appeal.
(4) Special counsel appointed in any case other than a non-notification case or a restricted notification case must not communicate with the accused about the relevant application or appeal except—
   (a) with the permission of the court, and
   (b) where permission is given, in accordance with such conditions as the court may impose.

(5) Before deciding whether to grant permission, the court must give—
   (a) the prosecutor, and
   (b) in the case of an application for a section (Order preventing or restricting disclosure: application by Secretary of State) order or a non-attendance order, the Secretary of State,

an opportunity to be heard.

(6) In this section—
   “the confidential information” means—
   (a) the information to which the relevant application or appeal relates, and
   (b) a copy of the relevant application or appeal,

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

Kenny MacAskill

662 After section 107, insert—

<Appeals

(1) The prosecutor may appeal to the High Court against—
   (a) the making of a section 106 order under section 106(4B),
   (b) the making of a section (Order preventing or restricting disclosure: application by Secretary of State) order,
   (c) the making of a restricted notification order,
   (d) the making of a non-attendance order,
   (e) the refusal of an application for a non-notification order,
   (f) the refusal of an application for an exclusion order, or
   (g) the refusal of an application for a section 106 order.

(2) The accused may appeal to the High Court against the making of—
   (a) an exclusion order under section 105(3),
   (b) a section 106 order,
   (c) a section (Order preventing or restricting disclosure: application by Secretary of State) order, or
   (d) a non-attendance order.

(3) The Secretary of State may appeal to the High Court against—
(a) the making of a section (Order preventing or restricting disclosure: application by Secretary of State) order under section (Order preventing or restricting disclosure: application by Secretary of State)(7),

(b) the refusal of an application for a restricted notification order,

(c) the refusal of an application for a non-attendance order, or

(d) the refusal of an application for a section (Order preventing or restricting disclosure: application by Secretary of State) order.

(4) If special counsel was appointed in relation to an application for a non-notification order, special counsel may appeal to the High Court against the making of—

(a) the non-notification order, or

(b) a section 106 order in relation to the same item of information.

(5) If special counsel was appointed in relation to an application for a restricted notification order, special counsel may appeal to the High Court against the making of—

(a) the restricted notification order, or

(b) a section (Order preventing or restricting disclosure: application by Secretary of State) order in relation to the same item of information.

(6) An appeal must be lodged not later than 7 days after the decision appealed against.

(7) The prosecutor is entitled to be heard in any appeal under this section.

(8) The accused is entitled to be heard in an appeal under—

(a) subsection (1)(a) or (g) or (2)(b) unless—

(i) a non-notification order has been made, or

(ii) an exclusion order has been made,

(b) subsection (1)(b), (2)(c) or (3)(a) or (d) unless—

(i) a restricted notification order has been made, or

(ii) a non-attendance order has been made,

(c) subsection (1)(d), (2)(d) or (3)(c) unless the court, on the application of the Secretary of State, excludes the accused from the hearing,

(d) subsection (1)(f) or (2)(a) unless the court, on the application of the prosecutor excludes the accused from the hearing.

(9) The Secretary of State is entitled to be heard in an appeal under subsection (1)(b), (c) or (d), (2)(c) or (d) or (5).>

Section 108

Kenny MacAskill

663 Leave out section 108
Section 109

Kenny MacAskill

664 Leave out section 109

Section 110

Kenny MacAskill

665 Leave out section 110

Section 111

Kenny MacAskill

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

Kenny MacAskill

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

Bill Aitken

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

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

After section 111, insert—

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

(1) This section applies where—

(a) the court makes a section (Order preventing or restricting disclosure: application by Secretary of State) order, and

(b) during the relevant period the Secretary of State, the prosecutor, special counsel or the accused becomes aware of information that was unavailable to the court at the time when the order was made.

(2) The Secretary of State or, as the case may be, the prosecutor, special counsel or the accused may apply to the court to review the order.

(3) Except in the case mentioned in subsection (4), the same persons are entitled to be heard on the application for review as were entitled to be heard on the application for the order.

(4) If—

(a) a restricted notification order was granted in relation to the order which is under review, and

(b) the court is satisfied that the conditions in section (Application for restricted notification order and non-attendance order)(6) are met,

the court may, where the Secretary of State or, as the case may be, the prosecutor or special counsel applies for the review, make an order prohibiting notification of the application for review being given to the accused.

(5) If—
(a) a non-attendance order was granted in relation to the order which is under review, and

(b) the court is satisfied that the conditions in section (Application for non-attendance order)(5) are met,

the court may, where the Secretary of State or, as the case may be, the prosecutor, special counsel or the accused applies for the review, exclude the accused from the review.

(6) If the court is not satisfied that the conditions mentioned in section (Order preventing or restricting disclosure: application by Secretary of State)(4) are met, the court may—

(a) recall the order which is under review, or

(b) recall the order which is under review and make an order requiring the information to be disclosed or partly disclosed to the accused in the specified manner.

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

(8) In this section—

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

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

(a) beginning with the making of the section (Order preventing or restricting disclosure: application by Secretary of State) order, and

(b) ending with the conclusion of the proceedings against the accused.

Section 112

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

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

Kenny MacAskill

685 In section 112, page 118, line 12, leave out <90(4)> and insert <111(8)>
Section 113

Kenny MacAskill

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

Kenny MacAskill

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

After section 115

Kenny MacAskill

688 After section 115, insert—

<Abolition of common law rules about disclosure>

(1) The provisions of this Part replace any equivalent common law rules about disclosure of information by the prosecutor in connection with criminal proceedings.

(2) The common law rules about disclosure of information by the prosecutor in connection with criminal proceedings are abolished in so far as they are replaced by or are inconsistent with the provisions of this Part.

(3) Sections (Application by accused for ruling on disclosure) and (Application by appellant for ruling on disclosure) do not affect any right under the common law of an accused or appellant to seek disclosure or recovery of information by or from the prosecutor by means of a procedure other than an application under one or other of those sections.

(4) Subsection (5) applies where, following an application (the “earlier disclosure application”) by the accused or the appellant under section (Application by accused for ruling on disclosure) or section (Application by appellant for ruling on disclosure), the court has made a ruling that (as the case may be)—

(a) section 89(3) does not apply to information, or

(b) information does not fall within section (Duty to disclose after conclusion of proceedings at first instance)(3).

(5) The accused or, as the case may be, the appellant, is not entitled to seek the disclosure or recovery of the same information by or from the prosecutor by means of any other procedure at common law on grounds that are substantially the same as any of those on which the earlier disclosure application was made.

(6) Subsection (7) applies where, following an application (the “earlier common law application”) by the accused under a procedure other than an application under section (Application by accused for ruling on disclosure) or (Application by appellant for ruling on disclosure), the court has decided not to make an order for the recovery or disclosure of information by or from the prosecutor.

(7) The accused or, as the case may be, the appellant is not entitled to make an application under section (Application by accused for ruling on disclosure) or (Application by appellant for ruling on disclosure) in relation to the same information on grounds that are substantially the same as any of those on which the earlier common law application was made.
(8) In this section, “appellant” has the meaning given by section (Sections (Duty to disclose after conclusion of proceedings at first instance) to (Review of ruling under section (Application by appellant for ruling on disclosure))): interpretation.>

Section 116

Kenny MacAskill

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

Kenny MacAskill

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

Bill Aitken

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

Kenny MacAskill

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

Kenny MacAskill

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

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>
After section 127

Sandra White

516 After section 127, insert—

<Control of lap dancing and other adult entertainment venues

(1) The 1982 Act is amended as follows.
(2) In section 41(2) (definition of place of public entertainment), after paragraph (aa) insert—

“(ab) adult entertainment venues (as defined in section 45A) in relation to which Schedule 2 (as modified for the purposes of that section) have effect, while being used as such;”.

(3) The title of Part 3 becomes “Control of sex shops and adult entertainment venues”.
(4) After section 45 insert—

“45A Control of lap dancing and other adult entertainment venues

(1) A local authority may resolve that Schedule 2, as modified for the purposes of this section, is to have effect in their area in relation to adult entertainment venues; and, if they do so resolve, that Schedule (as so modified) has effect from the day specified in the resolution.

(2) The day referred to in subsection (1) must not be before the expiry of the period of one month beginning with the day on which the resolution is passed.

(3) A local authority must, not later than 28 days before the day referred to in subsection (1), publish notice that they have passed a resolution under this section in a newspaper circulating in their area.

(4) The notice is to state the general effect of Schedule 2, as modified for the purposes of this section.

(5) For the purposes of this section, Schedule 2 is modified as follows—

(a) in paragraph 1, sub-paragraphs (b)(ii) (and the word “or” immediately preceding it) and (c) are omitted;

(b) for paragraph 2 substitute—

“In this Schedule, “adult entertainment venue” has the same meaning as in section 45A.”;
(c) in paragraph 9—

   (i) after sub-paragraph (5)(c) insert—

   “(ca) where it is intended to sell alcohol in the adult entertainment
     venue, an application for the grant, renewal or transfer of a
     premises licence under Part 3 of the Licensing (Scotland) Act
     2005 (asp 16) relating to that venue has been refused;”; and

   (ii) after sub-paragraph (6) insert—

   “(6A) A local authority may refuse an application for the grant or renewal of
     a licence despite the fact that a premises licence under Part 3 of the
     Licensing (Scotland) Act 2005 (asp 16) is in effect in relation to the
     adult entertainment venue.”;

(d) in paragraph 25, for “section 45” in each place where those words occur, substitute “section 45A”; and

(e) for “sex shop”, in each place where those words occur, substitute “adult
     entertainment venue”.

(6) In this section, “adult entertainment venue” means any premises, vehicle,
     vessel or stall used for a business which consists to a significant degree of
     providing relevant entertainment before a live audience; and, for the purposes
     of that definition—

     “audience” includes an audience of one;

     “display of nudity” means—

     (a) in the case of a woman, exposure of her breasts, nipples, pubic
         area, genitals or anus;

     (b) in the case of a man, exposure of his pubic area, genitals or anus;

     “relevant entertainment” means—

     (a) any live performance; or

     (b) any live display of nudity,

which is of such a nature that, ignoring financial gain, it must reasonably
be assumed to be provided solely or principally for the purpose of
sexually stimulating any member of the audience (whether by verbal or
other means).”.

Kenny MacAskill

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 128

173 In section 128, page 129, line 25, at end insert—
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

George Foulkes

542 After section 132, insert—

<Premises licence applications: disability compliance statements
In section 20 of the 2005 Act (application for premises licence), after subsection (4)(f), insert—

“(fa) a statement of compliance with Part 3 of the Disability Discrimination Act 1995, including information as to where reasonable adjustments have been or will be made to remove barriers to access for disabled people,”.

Bill Aitken

547 After section 132, insert—

<Premises licence: minor variations
(1) Section 29(6) of the 2005 Act (definition of minor variations to premises licence) is amended as follows.

(2) In paragraph (a), insert at the end “or if the variation relates only to parts of the premises to which the public does not have access”.

(3) After paragraph (c) insert—

“(ca) any reduction in the capacity of the premises,
   (cb) any change in the name by which the business carried on in the premises is to be known or under which it trades,
   (cc) any variation of the layout plan or operating plan required by virtue of any enactment relating to planning, building control, food safety or fire safety,”.

Robert Brown

550 After section 132, insert—
Premises licence: transfer on application of person other than licence holder

(1) Section 34 (transfer on application of person other than licence holder) of the 2005 Act is amended as follows.

(2) In subsection (3)—
   (a) the word “and” immediately preceding paragraph (d) is repealed, and
   (b) after that paragraph insert “, and

“(e) for any other reason, the business that was (prior to the event in question) carried on in the licensed premises to which the licence relates ceases to be carried on in those premises.”.

(3) In subsection (4), insert at the beginning “Subject to subsection (4A),”.

(4) After that subsection insert—

“(4A) In the case of an application made following the event specified in subsection (3)(e)—
   (a) subsection (8) of section 33 applies as if, after the words “the Board must” there were inserted “, if satisfied in all the circumstances that it is reasonable to do so,”, and
   (b) subsection (10)(b) of that section applies as if, after the words “if not so satisfied,” there were inserted “but otherwise satisfied that in all the circumstances it is reasonable to do so.”.

Kenny MacAskill

After section 132, insert—

Premises licences: connected persons and interested parties

(1) The 2005 Act is amended as follows.

(2) After section 40 insert—

“Connected persons and interested parties

40A Connected persons and interested parties: licence holder’s duty to notify changes

(1) A premises licence holder must, not later than one month after a person becomes or ceases to be—
   (a) a connected person in relation to the licence holder, or
   (b) an interested party in relation to the licensed premises,

give the appropriate Licensing Board notice of that fact.

(2) A notice under subsection (1) that a person has become a connected person or an interested party must specify—
   (a) the name and address of the person, and
   (b) if the person is an individual, the person’s date of birth.

(3) Where a Licensing Board receives a notice under subsection (1), the Board must give a copy of the notice to the appropriate chief constable.
(4) A premises licence holder who fails, without reasonable excuse, to comply with subsection (1) commits an offence.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.”.

(3) In section 48 (notification of change of name or address)—

(a) in subsection (1)—

(i) the word “or” immediately following paragraph (a) is repealed, and

(ii) after paragraph (b) insert “, or

(c) the name or address of any person who is—

(i) a connected person in relation to the licence holder, or

(ii) an interested party in relation to the licensed premises,”,

(b) after subsection (2) insert—

“(2A) Where a Licensing Board receives a notice under subsection (1), the Board must give a copy of the notice to the appropriate chief constable.”.

(4) In section 147 (interpretation), after subsection (4) insert—

“(5) For the purposes of this Act, a person is an interested party in relation to licensed premises if the person is not the holder of the premises licence nor the premises manager in respect of the premises but—

(a) has an interest in the premises as an owner or tenant, or

(b) has management and control over the premises or the business carried on on the premises.”.

(5) In section 148 (index of defined expressions), in the table, insert at the appropriate place—

“interested party section 147(5).”.

Robert Brown

543 After section 132, insert—

<Provisional premises licences

(1) Section 45 (provisional premises licence) of the 2005 Act is amended as follows.

(2) In subsection (6), for “2 years” substitute “5 years”.

(3) In subsection (8), paragraph (b) and the word “and” immediately preceding it are repealed.

(4) In subsection (10), for paragraphs (a) and (b) substitute—

“(a) for subsection (2) there were substituted—

“(2) An application under subsection (1) must be accompanied by—

(a) a plan sufficient to identify the site of the subject premises and give a general indication of their size,

(b) a document giving a general indication of—

(i) the anticipated capacity of the premises,
(ii) the hours during which it is proposed to serve alcohol on the premises,

(iii) the extent to which it is proposed to allow children or young persons entry to the premises, and

(c) the certificate required by section 50(2).”, and

(b) subsections (4) and (5) were omitted.”.

(5) After subsection (10) insert—

“(10A) Sections 21 to 32 have effect in relation to any provisional premises licence application and to any provisional premises licence as if references to—

(a) the operating plan were read as references to the document required under section 20(2)(b) (as substituted by subsection (10)(a)), and

(b) the layout plan were read as references to the plan required under section 20(2)(a) (as so substituted).”.

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 133

Bill Aitken

548 After section 133, insert—

Consumption of alcohol on licensed premises outwith licensed hours

In section 63(2) of the 2005 Act (exceptions to offence of allowing sale, consumption etc. of alcohol outwith licensed hours), after paragraph (f) insert—

“(g) allow alcohol to be consumed on licensed premises at any time within 45 minutes of the end of any period of licensed hours by—

(i) the premises licence holder,

(ii) the premises manager, or

(iii) any person aged 18 or over who, at the end of that period of licensed hours, was working on the premises.”.
Section 134

Kenny MacAskill

539 In section 134, page 134, line 17, leave out from <after> to end of line 22 and insert <in sub-
paragraph (4), after “Board” in the second place where it appears insert “or to a member of staff
provided under paragraph 8(1)(b)”>

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 136

James Kelly

698 After section 136, insert—
<24 hour licences: refusal, revocation etc. on advice or recommendation of Local Licensing Forum>

(1) The 2005 Act is amended as follows.

(2) In section 64 (24 hour licences to be granted only in exceptional circumstances)—

(a) in subsection (1), for “Subsection (2) applies” substitute “Subsections (2) to (4) apply”,

(b) in subsection (2), at the end insert “(the granting of any such application being referred to in this section and section 64A as “24 hour licensing”)”, and

(c) after subsection (2) insert—

“(3) In reaching a decision under subsection (2), the Licensing Board must have regard to any advice given or recommendations made by the Local Licensing Forum for the Board’s area that allowing 24 hour licensing in the area in which the subject premises are situated would be inappropriate or undesirable.

(4) Where the Local Licensing Forum has not, at the time the application is made, given any advice or made any recommendations about the appropriateness or desirability of allowing 24 hour licensing, the Licensing Board may invite it to do so before reaching a decision under subsection (2).”.

(3) After that section insert—

“64A Revocation etc. of 24 hour licence on advice or recommendation of Local Licensing Forum

(1) This section applies where—

(a) a Licensing Board has granted, under section 64, an application for 24 hour licensing, and

(b) the Local Licensing Forum for the Board’s area subsequently gives advice or makes recommendations to the Board to the effect that 24 hour licensing in the area in which the subject premises are situated is inappropriate or undesirable.

(2) The Licensing Board—

(a) must have regard to the advice or recommendations of the Local Licensing Forum, and

(b) may either revoke the licence or vary it so as to restrict the licensed hours during which alcohol may be sold on the premises to a continuous period of less than 24 hours.”>

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.>
After section 137, insert—

<Liability for offences

(1) The 2005 Act is amended as follows.

(2) In each of the following provisions, the word “knowingly” is repealed—

(a) section 1(3)(b),
(b) section 103(1),
(c) section 106(2),
(d) section 107(1),
(e) section 118(1),
(f) section 120(2) and (3),
(g) section 121(1),
(h) section 127(4), and
(i) section 128(5).

(3) After section 141 (offences by bodies corporate etc.) insert—

“141A Defence of due diligence for certain offences

(1) It is a defence for a person charged with an offence to which this section applies to prove that the person—

(a) did not know that the offence was being committed, and
(b) exercised all due diligence to prevent the offence being committed.

(2) This section applies to an offence under any of the following provisions of this Act—

section 1(3)(b),
section 103(1),
section 106(2),
section 107(1),
section 118(1),
section 120(2) or (3),
section 121(1),
section 127(4),
section 128(5).

141B Vicarious liability of premises licence holders and interested parties

(1) Subsection (2) applies where, on or in relation to any licensed premises, a person commits an offence to which this section applies while acting as the employee or agent of—

(a) the holder of the premises licence, or
(b) an interested party.

(2) The holder of the premises licence or, as the case may be, the interested party is also guilty of the offence and liable to be proceeded against and punished accordingly.

(3) It is a defence for a holder of a premises licence or an interested party charged with an offence to which this section applies by virtue of subsection (2) to prove that the holder of the licence or, as the case may be, the interested party—

(a) did not know that the offence was being committed by the employee or agent, and

(b) exercised all due diligence to prevent the offence being committed.

(4) Proceedings may be taken against the holder of the premises licence or the interested party in respect of the offence whether or not proceedings are also taken against the employee or agent who committed the offence.

(5) This section applies to an offence under any of the following provisions of this Act—

section 1(3),
section 15(5),
section 63(1),
section 97(7),
section 102(1),
section 103(1),
section 106(2),
section 107(1),
section 108(2) or (3),
section 113(1),
section 114,
section 115(2),
section 118(1),
section 119(1),
section 120(2),
section 121(1),
section 138(5).”.

After section 138

Kenny MacAskill

699 After section 138, insert—

<Powers of Licensing Standards Officers

(1) Section 15 of the 2005 Act is amended as follows.

62
(2) The section title becomes “Powers of entry, inspection and seizure”.

(3) In subsection (2)—

(a) the word “and” immediately preceding paragraph (b) is repealed, and

(b) after that paragraph insert—

“(c) power to take copies of, or of an entry in, any document found on the premises, and

(d) power to seize and remove any substances, articles or documents found on the premises.”.

(4) In subsection (3)—

(a) for “either” substitute “any”, and

(b) in paragraph (b), after “information” insert “or explanation”.

(5) After subsection (4) insert—

“(4A) Subsection (3)(c) includes power to require any document which is stored in electronic form and which is accessible from the premises to be produced in a form—

(a) in which it is legible, and

(b) in which it can be removed from the premises.

(4B) Nothing in subsection (3) requires a person to produce any document if the person would be entitled to refuse to produce that document in any proceedings in any court on the grounds of confidentiality of communications.

(4C) Nothing in subsection (3) requires a person to provide any information or explanation or produce any document if to do so would incriminate that person or that person’s spouse or civil partner.”.

(6) After subsection (6) insert—

“(7) The Scottish Ministers may by regulations make further provision about the procedure to be followed in the exercise of a power under this section.

(8) Where a Licensing Standards Officer seizes any substance, article or document under subsection (2)(d), the Officer must leave on the premises a notice—

(a) stating what was seized, and

(b) explaining why it was seized.

(9) The Scottish Ministers may by regulations make provision about the treatment of substances, articles or documents seized under subsection (2)(d).

(10) Regulations under subsection (9) may, in particular, make provision—

(a) about the retention, use, return, disposal or destruction of anything seized,

(b) about compensation for anything seized.”.

Schedule 4

Kenny MacAskill

180  In schedule 4, page 149, line 11, leave out <22(2) or>
In schedule 4, page 150, leave out lines 18 to 21

Section 140

Leave out section 140

Section 142

Leave out section 142

Section 143

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

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

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

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

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

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

In section 143, page 138, leave out line 33

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>

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

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

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

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

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

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

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

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

Kenny MacAskill

513 In schedule 5, page 154, line 4, at end insert—
<Section 20 (use of prints, samples etc.) is repealed.>

Kenny MacAskill

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

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

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

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

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**

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

<The Offensive Weapons Act 1996 (c.26)

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

**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(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

695 In schedule 5, page 158, line 32, at end insert—

In section 74 (appointment of stipendiary magistrates), subsection (6) is repealed.

After section 74 insert—

“74A Exercise of functions by stipendiary magistrates

(1) A stipendiary magistrate may, by reason of holding that office—

(a) exercise the same judicial and signing functions as are exercisable by a JP,
(b) do so in the same manner as a JP (including by using the title of office of JP).

(2) For the purpose of subsection (1)—

(a) the acts of a stipendiary magistrate are valid as if the magistrate were a JP,
(b) it does not matter if an enactment from which a JP derives authority to act in a specific case does not bear to give equivalent authority to a stipendiary magistrate.

(3) However, subsections (1) and (2) are subject to any provision of an enactment which expressly excludes a stipendiary magistrate from acting in a specific case.

(4) This section does not limit any other functions of a stipendiary magistrate (in particular, those exercisable in that capacity only).”.

In section 76 (signing functions)—

(a) in subsection (2), for “signing functions in the same manner as” substitute “the same signing functions as are exercisable by”,
(b) subsection (4) is repealed.

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”.

70
In schedule 5, page 159, line 14, leave out <134> and insert <156>