

Criminal Procedure (Amendment) (Scotland) Bill

1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 20	Schedule
Sections 21 and 22	Long Title

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

Before section 1

Mr Stewart Maxwell

80 Before section 1, insert—

<**Managed meetings**

After section 71 of the 1995 Act insert—

“Managed meetings

5 **71A Managed meetings**

(1) The prosecutor and an accused’s legal representative shall, not later than 3 days before the date of the preliminary hearing, meet to discuss any issues which require resolution to enable the case to be disposed of, or a trial diet appointed, at the preliminary hearing (such a meeting being referred to in this Act as a “managed meeting”).

10

(2) The prosecutor and the accused’s legal representative shall normally attend the managed meeting in person.

(3) A written note shall be kept of the managed meeting and such a note shall specify—

15

(a) the date on which the meeting was held;

(b) who was present at, or participated in any other way in, the meeting;

(c) the issues discussed;

(d) what was agreed in relation to any such issue; and

(e) the issues in respect of which agreement has not been reached.

20

(4) In this section—

“the accused’s legal representative” means—

(a) the solicitor engaged by the accused for the purposes of the conduct of his case at the preliminary hearing; or

(b) where the solicitor has instructed counsel for the purposes of the conduct of the accused’s case at the preliminary hearing, either the solicitor or that counsel, or both of them; and

25

“counsel” includes a solicitor who has a right of audience in the High Court of Justiciary under section 25A (rights of audience in various courts including the High Court of Justiciary) of the Solicitors (Scotland) Act 1980 (c.46).”.>

Margaret Mitchell

- 80A** As an amendment to amendment 80, line 6, after <shall,> insert <as soon as possible after the indictment is served and>

Margaret Mitchell

- 80B** As an amendment to amendment 80, line 6, leave out <3> and insert <5>

Pauline McNeill

- 80C** As an amendment to amendment 80, line 19, at end insert—
- <() The note kept under subsection (3) above shall be included as part of the written record provided for under section 72E of this Act.>

Section 1

Margaret Mitchell

- 81** In section 1, page 2, line 6, after <diet> insert—
- <() where the accused has been committed for the offence in respect of which the indictment is served until liberated in due course of law and is still detained by virtue of that committal following service of the indictment, not less than 15 clear days,
- () in any other case,>

Hugh Henry

- 4** In section 1, page 3, line 9, at end insert—
- <(ba) ascertain whether there is any objection to the admissibility of any evidence which any party wishes to raise despite not having given the notice referred to in paragraph (b)(i) above, and—
- (i) if so, decide whether to grant leave under section 79(1) of this Act for the objection to be raised; and
- (ii) if leave is granted, dispose of the objection unless it considers it inappropriate to do so at the preliminary hearing;>

Hugh Henry

- 5** In section 1, page 3, line 11, after <by> insert <the prosecutor or>

Hugh Henry

- 6** In section 1, page 3, line 36, after <notice> insert <, objection>

Hugh Henry

7 In section 1, page 3, line 36, after <(6)(b)> insert <or (ba)>

Hugh Henry

8 In section 1, page 3, line 37, after <may> insert <—
(a)>

Hugh Henry

9 In section 1, page 3, line 39, after <notice> insert <, objection>

Hugh Henry

10 In section 1, page 3, line 39, at end insert <, or
(b) appoint the issue, application, notice, objection or other matter to be
disposed of at the trial diet.>

Margaret Mitchell

82 In section 1, page 4, line 4, leave out <140> and insert <110>

Hugh Henry

11 In section 1, page 4, line 19, leave out <diet> and insert <preliminary hearing>

Margaret Mitchell

83 In section 1, page 4, line 24, leave out <140> and insert <110>

Margaret Mitchell

84 In section 1, page 4, line 29, leave out <140> and insert <110>

Margaret Mitchell

85 In section 1, page 4, line 33, leave out <140> and insert <110>

Margaret Mitchell

86 In section 1, page 4, line 36, leave out <140> and insert <110>

Margaret Mitchell

87 In section 1, page 5, line 16, leave out <140> and insert <110>

Margaret Mitchell

88 In section 1, page 5, line 16, leave out <(4)(aa)(ii)> and insert <(4)(b)>

Hugh Henry

- 12 In section 1, page 5, line 21, leave out from beginning to end of line 7 on page 6

Hugh Henry

- 13 In section 1, page 6, line 9, leave out <order the Clerk of Justiciary to>

Hugh Henry

- 14 In section 1, page 6, line 11, leave out third <of> and insert <to>

Hugh Henry

- 15 In section 1, page 6, line 19, after <by> insert <the prosecutor or>

Hugh Henry

- 16 In section 1, page 6, line 21, leave out from <by> to <order> in line 22

Hugh Henry

- 17 In section 1, page 6, line 25, at end insert—

- <() The fact that a preliminary hearing in any case has been dispensed with under subsection (8) above shall not affect the calculation in that case of any time limit for the giving of any notice or the doing of any other thing under this Act, being a time limit fixed by reference to the preliminary hearing.
- () Accordingly, any such time limit shall have effect in any such case as if it were fixed by reference to the date on which the preliminary hearing would have been held if it had not been dispensed with.>

Hugh Henry

- 18 In section 1, page 6, leave out lines 26 and 27

Hugh Henry

- 19 In section 1, page 6, line 28, at end insert—

- <() The prosecutor shall not raise a fresh libel in any case in which the court has deserted a preliminary hearing *simpliciter* unless the court's decision has been reversed on appeal.>

Hugh Henry

- 20 In section 1, page 7, line 6, at end insert—

- <() Where notice is given to the accused under subsection (3)(b) above, then for the purposes of section 65(4) of this Act—
 - (a) the giving of the notice shall be taken to be service of an indictment in respect of the sheriff court; and
 - (b) the previous service of the indictment in respect of the High Court shall be disregarded.>

Hugh Henry

- 21 In section 1, page 7, leave out lines 15 and 16 and insert—
- <(1A) The court may, on cause shown, allow a preliminary hearing to proceed notwithstanding the absence of the accused.
 - (1B) Where—
 - (a) the accused fails to appear at a preliminary hearing;
 - (b) the court allows the hearing to proceed in his absence under subsection (1A) above; and
 - (c) no plea is entered on behalf of the accused at the hearing,the accused shall be treated for the purposes of proceedings at the preliminary hearing as having pled not guilty.>

Section 2

Hugh Henry

- 22 In section 2, page 8, line 5, leave out <Crown Agent> and insert <Court>

Mr Stewart Maxwell

- 89 In section 2, page 8, line 15, leave out from <; and> to end of line 16

Pauline McNeill

- 90 In section 2, page 8, line 17, leave out <may be prescribed by Act of Adjournal> and insert <the Scottish Ministers may, by order made by statutory instrument, prescribe.
- () A statutory instrument containing an order under subsection (4) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.>

Mr Stewart Maxwell

- 91 In section 2, page 8, leave out lines 18 to 20 and insert—
- <() A written record shall contain the following information—
 - (a) the date on which the prosecutor and the accused’s legal representative discussed the state of preparation of the case;
 - (b) the extent to which the prosecutor and the accused’s legal representative have complied with the duty under section 257(1) of this Act;
 - (c) whether any applications or notices under section 271A(2), 271C(2), 275(1) or 288E(2) of this Act will be made or lodged prior to the preliminary hearing;
 - (d) whether there are any preliminary issues which require to be disposed of at the preliminary hearing;
 - (e) the anticipated length of the trial;
 - (f) any outstanding issues which require to be addressed;

- (g) the timescale within which it is anticipated that any such outstanding issues will be resolved;
- (h) any other matter which the prosecutor or the accused's legal representative believe could be disposed of with advantage before the trial;
- (i) which witnesses in the list of witnesses will be required by the prosecutor and the accused's legal representative to attend the trial;
- (j) information as to the state of preparation of the prosecutor and the accused's legal representative with respect to their cases; and
- (k) such other information as the prosecutor or the accused's legal representative consider relevant.>

Section 3

Hugh Henry

- 23** In section 3, page 9, line 2, leave out from first <fix> to end of line 4 and insert <appoint or not to appoint it as a floating diet for the purposes of section 83A(1) of this Act;”.>

Section 5

Hugh Henry

- 24** In section 5, page 9, line 38, leave out <in the High Court> and insert <on indictment>

Margaret Mitchell

- 63** In section 5, page 9, line 38, leave out from <a> to <his> in line 39 and insert <each legal representative engaged for the purposes of the accused's>

Hugh Henry

- 25** In section 5, page 10, line 1, leave out <Crown Agent> and insert <prosecutor>

Hugh Henry

- 26** In section 5, page 10, line 2, at end insert—
- <(1A) A solicitor is to be taken to have complied with the duty under subsection (1) to notify the prosecutor of his engagement if, before service of the indictment, he—
 - (a) notified in writing the procurator fiscal for the district in which the charge against the accused was then being investigated that he was then engaged by the accused for the purposes of his defence; and
 - (b) had not notified that procurator fiscal in writing that he had been dismissed by the accused or had withdrawn from acting.>

Margaret Mitchell

- 64** In section 5, page 10, line 3, leave out <solicitor> and insert <legal representative>

Hugh Henry

27 In section 5, page 10, line 3, after <solicitor> insert <as is referred to in subsection (1) above>

Margaret Mitchell

65 In section 5, page 10, line 4, leave out <accused> and insert <person who engaged the representative>

Margaret Mitchell

66 In section 5, page 10, line 6, leave out <solicitor> and insert <representative>

Hugh Henry

28 In section 5, page 10, line 6, leave out <Crown Agent> and insert <prosecutor>

Hugh Henry

29 In section 5, page 10, line 7, at end insert—

<() The prosecutor shall, for the purposes of subsections (1) and (2), be taken to be notified or informed of any fact in accordance with those subsections if—

(a) in proceedings in the High Court, the Crown Agent; or

(b) in proceedings on indictment in the sheriff court, the procurator fiscal for the district in which the trial diet is to be held,

is so notified or, as the case may be, informed of the fact.>

Hugh Henry

30 In section 5, page 10, line 8, leave out <so informed> and insert <informed in accordance with subsection (2) above of the dismissal or withdrawal of the accused's solicitor>

Margaret Mitchell

67 In section 5, page 10, line 16, leave out <solicitor> and insert <legal representative>

Hugh Henry

31 In section 5, page 10, line 18, at beginning insert <in the case of proceedings in the High Court,>

Hugh Henry

32 In section 5, page 10, line 18, at end insert <or, if a preliminary hearing was dispensed with under section 72B(8) of this Act, at the time it was so dispensed with;>

Hugh Henry

33 In section 5, page 10, leave out lines 19 and 20

Hugh Henry

34 In section 5, page 10, line 20, at end insert—

<() in the case of solemn proceedings in the sheriff court, at the time of a first diet;>

Margaret Mitchell

- 68 In section 5, page 10, line 26, leave out from second <the> to <his> in line 27 and insert <a new legal representative has been engaged, in an equivalent capacity to that of the representative who was dismissed or withdrew, for the purposes of the accused's>

Hugh Henry

- 35 In section 5, page 10, leave out lines 28 to 31

Margaret Mitchell

- 69 In section 5, page 10, line 29, leave out from second <the> to <his> in line 30 and insert <a new legal representative has not been engaged, in an equivalent capacity to that of the representative who was dismissed or withdrew, for the purposes of the accused's>

Margaret Mitchell

- 70 In section 5, page 10, line 39, leave out <solicitor engaged by the accused> and insert <legal representative engaged, in an equivalent capacity to the representative who was dismissed or withdrew,>

Margaret Mitchell

- 71 In section 5, page 10, line 42, at end insert—

<() In this section—

“legal representative” means—

- (a) a solicitor engaged by the accused for the purposes of his defence;
- (b) counsel instructed for the purposes of the accused's defence,

at any part of the proceedings; and

“counsel” includes a solicitor who has a right of audience in the High Court of Justiciary under section 25A (rights of audience in various courts including the High Court of Justiciary) of the Solicitors (Scotland) Act 1980 (c.46).”.>

Hugh Henry

- 36 Move section 5 to after section 10

Section 6

Hugh Henry

- 37 Leave out section 6

Section 7

Hugh Henry

- 38 Leave out section 7

Section 8

Hugh Henry

- 39 In section 8, page 12, line 35, at end insert—

<() Where, in any case which is to be tried in the High Court, the trial diet does not commence on the day appointed for the holding of the diet, the indictment shall fall.>

Hugh Henry

- 40 In section 8, page 12, line 36, leave out from beginning to <applies,> in line 37 and insert <However, where, in appointing a day for the holding of the trial diet, the Court has indicated that the diet is to be a floating diet, the diet>

Hugh Henry

- 41 In section 8, page 13, leave out lines 6 to 10

Section 9

Margaret Mitchell

- 92 In section 9, page 13, line 21, after <commenced> insert <wherever possible, within the period of 9 months, and, in all cases,>

Pauline McNeill

- 93 In section 9, page 13, line 36, leave out <“entitled to be admitted to bail”> and insert <“, after the hearing provided for in subsection (8A) below and subject to the outcome of that hearing, admitted to bail”>

Margaret Mitchell

- 94 In section 9, page 13, line 36, leave out <be admitted to> and insert <apply for>

Margaret Mitchell

- 95 In section 9, page 13, line 38, leave out from beginning to end of line 10 on page 14 and insert—
<() in paragraph (b),>

Pauline McNeill

- 96 In section 9, page 14, line 4, leave out <entitled to be admitted to bail> and insert <, after the hearing provided for in subsection (8A) below and subject to the outcome of that hearing, admitted to bail>

Margaret Mitchell

- 97 In section 9, page 14, line 5, leave out <be admitted to> and insert <apply for>

Pauline McNeill

- 98 In section 9, page 14, line 7, leave out <entitled to be admitted to bail> and insert <, after the hearing provided for in subsection (8A) below and subject to the outcome of that hearing, admitted to bail>

Pauline McNeill

- 99 In section 9, page 14, line 11, leave out <“entitled to be admitted to bail”> and insert <“, after the hearing provided for in subsection (8A) below and subject to the outcome of that hearing, admitted to bail”>

Margaret Mitchell

- 100 In section 9, page 14, line 11, leave out <be admitted to> and insert <apply for>

Margaret Mitchell

- 101 In section 9, page 14, line 15, leave out <subsections (1)(a) and (4)(aa)(i)> and insert <subsection (1)(a)>

Margaret Mitchell

- 102 In section 9, page 14, line 16, at end insert—
- <() Where—
 - (a) an accused is entitled to apply for bail under subsection (4) above; and
 - (b) 140 days after the date on which he was detained by virtue of the committal referred to in that subsection—
 - (i) he is still in detention; and
 - (ii) the trial of the case has not commenced,he shall be entitled to be admitted to bail forthwith.”.>

Margaret Mitchell

- 103 In section 9, page 14, line 32, leave out subsection (9)

Pauline McNeill

- 104 In section 9, page 14, line 33, leave out <entitled>

Pauline McNeill

- 105 In section 9, page 15, line 3, after <heard> insert <in relation to bail conditions>

Section 10

Hugh Henry

42 In section 10, page 15, line 25, at end insert—

<() In subsection (4), in paragraph (b)—

- (a) at the beginning insert “if the accused, at the time of citation, is not in custody,” and
- (b) for “accused’s dwelling-house or place of business” substitute “relevant premises”.

() After subsection (4) insert—

“(4ZA)In subsection (4)(b) above, “the relevant premises” means—

- (a) where the accused, at the time of citation, has been admitted to bail, his proper domicile of citation as specified for the purposes of section 25 of this Act; or
- (b) in any other case, any premises which the constable reasonably believes to be the accused’s dwelling-house or place of business.”.

() After subsection (6B) insert—

“(6C) An accused shall be taken to be served with—

- (a) the indictment and lists of witnesses and productions; and
- (b) the notice referred to in subsection (6) above,

if they are served on the solicitor specified in subsection (6D) below at that solicitor’s place of business.

(6D) The solicitor referred to in subsection (6C) above is any solicitor who—

- (a) has notified in writing the procurator fiscal for the district in which the charge against the accused was being investigated that he is engaged by the accused for the purposes of his defence; and
- (b) has not informed that procurator fiscal that he has been dismissed by, or has withdrawn from acting for, the accused.

(6E) It is the duty of a solicitor who has, before service of an indictment, notified a procurator fiscal that he is engaged by the accused for the purposes of his defence to inform that procurator fiscal in writing forthwith if he is dismissed by, or withdraws from acting for, the accused.”.>

After section 10

Hugh Henry

43 After section 10, insert—

<Procedure where trial diet does not proceed

For section 81 (procedure where trial diet does not proceed) substitute—

“81 Procedure where trial diet does not proceed

- (1) The prosecutor shall not raise a fresh libel in a case in which the court has deserted the trial *simpliciter* unless the court’s decision has been reversed on appeal.
- (2) Where a trial diet in any proceedings on indictment is deserted *pro loco et tempore* the court may appoint a further trial diet for a later date and the accused shall appear and answer the indictment at that diet.
- (3) In appointing a further trial diet under subsection (2) above, the court—
 - (a) shall have regard to the state of preparation of the prosecutor and the accused with respect to their cases and, in particular, to the likelihood of the case being ready to proceed to trial on the date to be appointed for the trial diet; and
 - (b) may, if it appears to the court that there are any preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of or ascertained before the trial diet, appoint a diet to be held before the trial diet for the purpose of disposing of or, as the case may be, ascertaining them.
- (4) Subsection (5) below applies where, at a trial diet in any proceedings on indictment—
 - (a) the diet has been deserted *pro loco et tempore* for any reason and no further trial diet has been appointed under subsection (2) above; or
 - (b) the indictment is for any reason not brought to trial and the diet has not been continued, adjourned or postponed.
- (5) Where this subsection applies, the prosecutor may, at any time within the period of two months after the relevant date, give notice to the accused on another copy of the indictment to appear and answer the indictment—
 - (a) where the trial diet referred to in subsection (4) above was in the High Court—
 - (i) at a further preliminary hearing in that Court not less than seven clear days after service of the notice; or
 - (ii) where the charge is one that can lawfully be tried in the sheriff court, at a first diet not less than 15 clear days after service of the notice and not less than 10 clear days before the trial diet and at a trial diet not less than 29 clear days after service of the notice; or
 - (b) where the trial diet referred to in subsection (4) was in the sheriff court—
 - (i) at a further trial diet in that court not less than seven clear days after service of the notice; or
 - (ii) at a preliminary hearing in the High Court not less than 21 clear days after service of the notice.
- (6) Where notice is given to the accused under paragraph (a)(ii) or (b)(ii) of subsection (5) above, then for the purposes of section 65(4) of this Act—
 - (a) the giving of the notice shall be taken to be service of an indictment in respect of—

- (i) in the case of a notice under paragraph (a)(ii) of subsection (5) above, the sheriff court; or
 - (ii) in the case of a notice under paragraph (b)(ii) of that subsection, the High Court; and
- (b) the previous service of the indictment in respect of—
- (i) in the case of a notice under paragraph (a)(ii) of subsection (5), the High Court; or
 - (ii) in the case of a notice under paragraph (b)(ii) of that subsection, the sheriff court,
- shall be disregarded.
- (7) A notice under subsection (5) above shall be in such form as may be prescribed by Act of Adjournal, or as nearly as may be in such form.
- (8) In subsection (5) above, “the relevant date” means—
- (a) where paragraph (a) of subsection (4) applies, the date on which the trial diet was deserted as mentioned in that paragraph; or
 - (b) where paragraph (b) of that subsection applies, the date of the trial diet referred to in that subsection.”.>

Section 11

Michael Matheson

- 1** In section 11, page 15, line 33, after <diet;> insert—
- <() all the evidence has been led;>

Michael Matheson

- 2** In section 11, page 16, line 38, leave out from beginning to <case> in line 1 on page 17

Michael Matheson

- 3** In section 11, page 17, line 2, after <diet> insert <, and all the evidence has been led>

Hugh Henry

- 44** In section 11, page 17, line 3, at end insert—
- <() In section 70 (proceedings against bodies corporate) of the 1995 Act—
- (a) in subsection (5), for the words from “shall” to “hear” substitute “may—
 - (a) on the motion of the prosecutor; and
 - (b) if satisfied as to the matters specified in subsection (5A) below, proceed with the trial”,
 - (b) after that subsection insert—
- “(5A) The matters referred to in subsection (5)(b) above are—

- (a) that the body corporate was cited in accordance with section 66 of this Act as read with subsection (2) above; and
- (b) that it is in the interests of justice to proceed as mentioned in subsection (5) above.

(5B) Subsections (2B) to (2F) and (4) of section 92 of this Act shall apply where the court exercises the power under subsection (5) of this section as they apply where the court exercises the power under subsection (2A) of that section but as if references in them to the accused were references to the body corporate.”

- () In section 22 (automatic availability of criminal legal aid) of the Legal Aid (Scotland) Act 1986 (c.47), in subsection (1)(dd), after “person” insert “or section 92(2), (2B)(b) or (2E) of that Act (appointment of solicitor for accused where the trial is to proceed in his absence)”.
- () In section 31 of that Act, in subsection (1A) (exceptions to provision entitling a person receiving legal aid or advice and assistance to select a solicitor and counsel), in paragraph (f), for “section” substitute “sections 92(2), (2B)(b), (2D) and (2E) and”.>

Section 13

Hugh Henry

45 In section 13, page 23, line 10, leave out from <if> to end of line 12

Hugh Henry

46 In section 13, page 23, line 24, after <issue> insert <(other than an objection to the admissibility of any evidence)>

Hugh Henry

47 In section 13, page 23, line 26, after <may> insert <—
(a)>

Hugh Henry

48 In section 13, page 23, line 27, after <issue> insert <, or
(b) appoint the plea or issue to be disposed of at the trial diet.>

Hugh Henry

49 In section 13, page 23, line 27, at end insert—

<() After section 87 of the 1995 Act insert—

“87A Disposal of preliminary matters at trial diet

Where—

- (a) any preliminary plea or issue; or
- (b) in a case to be tried in the High Court, any application, notice or other matter referred to in section 72(6)(b)(ii) or (iii) of this Act,

is to be disposed of at the trial diet, it shall be so disposed of before the jury is sworn, unless, where it is a preliminary issue consisting of an objection to the admissibility of any evidence, the court at the trial diet considers it is not capable of being disposed of before then.”>

After section 13

Hugh Henry

50 After section 13, insert—

<Objections to admissibility of evidence raised without due notice

(1) In section 71 (first diet) of the 1995 Act—

(a) after subsection (2) there is inserted—

“(2YA)At a first diet, the court shall also ascertain whether there is any objection to the admissibility of any evidence which any party wishes to raise despite not having given the notice referred to in subsection (2) above, and—

(a) if so, decide whether to grant leave under section 79(1) of this Act for the objection to be raised; and

(b) if leave is granted, dispose of the objection unless it considers it inappropriate to do so at the first diet.

(2ZA)Where the court, having granted leave for the objection to be raised, decides not to dispose of it at the first diet, the court may—

(a) appoint a further diet to be held before the trial diet for the purpose of disposing of the objection; or

(b) appoint the objection to be disposed of at the trial diet.”,

(b) in subsection (3), for the words “or (2)” substitute “, (2) or (2YA)”.

(2) After section 79 of the 1995 Act (as inserted by section 13 of this Act) insert—

“79A Objections to admissibility of evidence raised after first diet or preliminary hearing

(1) This section applies where a party seeks to raise an objection to the admissibility of any evidence after—

(a) in proceedings in the High Court, the preliminary hearing; or

(b) in proceedings on indictment in the sheriff court, the first diet.

(2) The court shall not, under section 79(1) of this Act, grant leave for the objection to be raised if the party seeking to raise it has not given written notice of his intention to do so to the other parties.

(3) However, the court may, where the party seeks to raise the objection after the commencement of the trial, dispense with the requirement under subsection (2) above for written notice to be given.

(4) Where the party seeks to raise the objection after the commencement of the trial, the court shall not, under section 79(1) of this Act, grant leave for the objection to be raised unless it considers that it could not reasonably have been raised before that time.

- (5) Where the party seeks to raise the objection before the commencement of the trial and the court, under section 79(1), grants leave for it to be raised, the court shall—
 - (a) if it considers it appropriate to do so, appoint a diet to be held before the commencement of the trial for the purpose of disposing of the objection; or
 - (b) dispose of the objection at the trial diet.
- (6) In appointing a diet under subsection (5)(a) above, the court may postpone the trial diet for such period as appears to it to be appropriate and may, if it thinks fit, direct that such period (or some part of it) shall not count towards any time limit applying in respect of the case.
- (7) The accused shall appear at any diet appointed under subsection (5)(a) above.
- (8) For the purposes of this section, the trial shall be taken to commence when the jury is sworn.”.>

Hugh Henry

51 After section 13, insert—

<Alteration of diets

After section 75 of the 1995 Act insert—

“Adjournment and alteration of diets

75A Adjournment and alteration of diets

- (1) This section applies where any diet has been fixed in any proceedings on indictment.
- (2) The court may, if it considers it appropriate to do so, adjourn the diet.
- (3) However—
 - (a) in the case of a trial diet, the court may adjourn the diet under subsection (2) above only if the indictment is not brought to trial at the diet;
 - (b) if the court adjourns any diet under that subsection by reason only that, following enquiries for the purpose of ascertaining whether the accused has engaged a solicitor for the purposes of the conduct of his defence at or for the purposes of a preliminary hearing or at a trial, it appears to the court that he has not done so, the adjournment shall be for a period of not more than 48 hours.
- (4) A trial diet in the High Court may be adjourned under subsection (2) above to a diet to be held at a sitting of the Court in another place.
- (5) The court may, on the application of any party to the proceedings made at any time before commencement of any diet—
 - (a) discharge the diet; and
 - (b) fix a new diet for a date earlier or later than that for which the discharged diet was fixed.
- (6) Before determining an application under subsection (5) above, the court shall give the parties an opportunity to be heard.

- (7) However, where all the parties join in an application under that subsection, the court may determine the application without hearing the parties and, accordingly, may dispense with any hearing previously appointed for the purpose of subsection (6) above.
- (8) Where there is a hearing for the purpose of subsection (6) above, the accused shall attend it unless the court permits the hearing to proceed notwithstanding the absence of the accused.
- (9) In appointing a new trial diet under subsection (5)(b) above, the court—
 - (a) shall have regard to the state of preparation of the prosecutor and the accused with respect to their cases and, in particular, to the likelihood of the case being ready to proceed to trial on the date to be appointed for the trial diet; and
 - (b) may, if it appears to the court that there are any preliminary pleas, preliminary issues or other matters which require to be, or could with advantage be, disposed of or ascertained before the trial, appoint a diet to be held before the trial diet for the purpose of disposing of or, as the case may be, ascertaining them.
- (10) A date for a new diet may be fixed under subsection (5)(b) above notwithstanding that the holding of the diet on that date would result in any provision of this Act as to the minimum or maximum period within which the diet is to be held or to commence not being complied with.
- (11) In subsections (5) to (9) above, “the court” means—
 - (a) in the case of proceedings in the High Court, a single judge of that Court; and
 - (b) in the case of proceedings in the sheriff court, that court.
- (12) For the purposes of subsection (5) above—
 - (a) a diet other than a trial diet shall be taken to commence when it is called; and
 - (b) a trial diet shall be taken to commence when the jury is sworn.”.>

Michael Matheson

72* After section 13, insert—

<Disclosure of information

After section 255A of the 1995 Act insert—

“Disclosure of information

255B Disclosure of information

- (1) This section relates to solemn proceedings.
- (2) The prosecutor shall provide to an accused or, if the accused is legally represented, to the accused’s legal representative—
 - (a) a written explanation of any material developments in relation to the investigation of the case; and
 - (b) access to all relevant evidence.

- (3) Information referred to in subsection (2)(a) above shall be provided as soon as reasonably practicable after such material developments occur.
- (4) Access referred to in subsection (2)(b) above shall be provided as soon as reasonably practicable after it becomes available.

(5) In this section—

“the accused’s legal representative” means—

- (a) the solicitor; or
- (b) where the solicitor has instructed counsel for the purposes of the conduct of the accused’s case, either the solicitor or that counsel, or both; and

“counsel” includes a solicitor who has a right of audience in the High Court of Justiciary under section 25A (rights of audience in various courts including the High Court of Justiciary) of the Solicitors (Scotland) Act 1980 (c.46).”.>

Section 14

Margaret Mitchell

73 Leave out section 14

Section 16

Hugh Henry

52 In section 16, page 26, line 31, after <by> insert <the prosecutor or>

After section 19

Hugh Henry

78 After section 19, insert—

<Protection of Children (Scotland) Act 2003: references following conviction

- (1) In section 10 (referral of person convicted of offence against a child for inclusion on list of persons considered unsuitable to work with children) of the Protection of Children (Scotland) Act 2003 (asp 5)—
 - (a) for “proposed reference”, where it appears in subsections (5) and (6), substitute “reference proposed under subsection (1) above”,
 - (b) for paragraphs (a) and (b) of subsection (6) substitute—
 - “(a) the period during which an appeal against the proposed reference may be brought has expired without an appeal being brought; or
 - (b) where an appeal is brought within that period, it is dismissed or abandoned.”.
- (2) In subsection (1) of section 110 (note of appeal) of the 1995 Act, after “Act”, where second occurring, insert “or, in the case of an appeal under section 106(1)(db) or (dc) of this Act, the date on which the proposal to make a reference is made”.

- (3) After subsection (2) of section 111 (extension of period during which an appeal may be brought in solemn proceedings) insert—
- “(3) Subsection (2) above does not allow the High Court to extend any such period which relates to an appeal under section 106(1)(db), (dc) or (f)(ii) or (iii) of this Act.”.
- (4) After subsection (3) of section 181 (extension of period during which an appeal may be brought in summary proceedings) insert—
- “(4) Subsection (1) above does not allow the High Court to make a direction in relation to an appeal under section 175(2)(cb) or (d)(ii) or (iii) of this Act.”.
- (5) In subsection (2)(a) of section 186 (appeals against sentence) of the 1995 Act—
- (a) the word “or”, which immediately precedes sub-paragraph (ii) is repealed,
- (b) after that sub-paragraph insert “; or
- (iii) in the case of an appeal under section 175(2)(cb), the date on which it is proposed that a reference be made”.>

Schedule

Hugh Henry

- 53** In the schedule, page 30, line 39, at end insert—
- <() after subsection (4) insert—
- “(4A) The prosecutor shall have a duty to cite a witness included in the list only if—
- (a) it has been ascertained under—
- (i) in the case of proceedings in the High Court, section 72(6)(c); or
- (ii) in the case of proceedings in the sheriff court, section 71(1C)(a), of this Act that the witness is required by the prosecutor or the accused to attend the trial; or
- (b) where, in the case of proceedings in the High Court, the preliminary hearing has been dispensed with under subsection (8) of section 72B of this Act, the witness was identified in the application under that subsection as being required by the prosecutor or the accused to attend the trial.”.>

Hugh Henry

- 54** In the schedule, page 31, line 24, at end insert—
- <Section 71A is repealed.>

Hugh Henry

- 55** In the schedule, page 32, line 6, leave out paragraph 17 and insert—
- <17 Section 80 (alteration and postponement of trial diet) is repealed.>

Hugh Henry

- 56 In the schedule, page 32, line 16, leave out paragraph 18

Long Title

Mr Stewart Maxwell

- 106 In the long title, page 1, line 2, after second <of> insert <managed meetings and>

Hugh Henry

- 57 In the long title, page 1, line 2, leave out from <and> to <dismissal> in line 4

Hugh Henry

- 58 In the long title, page 1, line 4, leave out <alteration and>

Hugh Henry

- 74 In the long title, page 1, line 5, leave out from first <to> to <proceed;> in line 6

Hugh Henry

- 59 In the long title, page 1, line 9, leave out from <remove> to second <for> and insert <make further provision as to>

Hugh Henry

- 60 In the long title, page 1, line 10, after <jurors,> insert <to require any solicitor engaged by the accused to notify the court and the prosecutor of his engagement, withdrawal and dismissal,>

Hugh Henry

- 75 In the long title, page 1, line 10, after <jurors,> insert <to make new provision as to the procedure where the trial diet does not proceed,>

Hugh Henry

- 61 In the long title, page 1, line 12, after <issues> insert <and to make new provision as to the adjournment and alteration of diets;>

Michael Matheson

- 76 In the long title, page 1, line 12, after <issues;> insert <to make provision for the disclosure of information by the prosecutor;>

Margaret Mitchell

- 77 In the long title, page 1, line 12, leave out from second <to> to <monitored;> in line 14

Hugh Henry

- 79** In the long title, page 1, line 20, after <prosecutor;> insert <to clarify when criminal proceedings are finally determined for the purposes of section 10 of the Protection of Children (Scotland) Act 2003 (asp 5);>

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