

Criminal Procedure (Amendment) (Scotland) Bill

3rd 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.

After section 12

Hugh Henry

119 After section 12, insert—

<Service etc. on accused through a solicitor

After section 72F of the 1995 Act (as inserted by section 5 of this Act) insert—

“72G Service etc. on accused through a solicitor

- (1) In any proceedings on indictment, anything which is to be served on or given, notified or otherwise intimated to, the accused shall be taken to be so served, given, notified or intimated if it is, in such form and manner as may be prescribed by Act of Adjournal, served on or given, notified or intimated to (as the case may be) the solicitor described in subsection (2) below at that solicitor’s place of business.
- (2) That solicitor is any solicitor—
 - (a) who—
 - (i) has notified the prosecutor under subsection (1) of section 72F of this Act that he is engaged by the accused for the purposes of his defence; and
 - (ii) has not informed the prosecutor under subsection (2) of that section that he has been dismissed by, or has withdrawn from acting for, the accused; or
 - (b) who—
 - (i) has been appointed to act for the purposes of the accused’s defence at the trial under section 92 or 288D of this Act; and
 - (ii) has not been relieved of the appointment by the court.”.>

Section 13

Hugh Henry

120 In section 13, page 23, line 8, after <section> insert <27(4A)(a),>

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.”.>

Hugh Henry

121 After section 13, insert—

<Uncontroversial evidence

In section 258 (uncontroversial evidence) of the 1995 Act, after subsection (4) insert—

- “(4A) Where a notice is served under subsection (3) above in any solemn proceedings, the court may, on the application of any party to the proceedings made not less than 48 hours before the relevant diet, direct that any challenge in the notice to any fact is to be disregarded for the purposes of subsection (4) above if the court considers the challenge to be unjustified.
- (4B) In subsection (4A) above, “the relevant diet” means—
 - (a) in proceedings in the High Court, the preliminary hearing; and
 - (b) in proceedings in the sheriff court, the first diet.
- (4C) In proceedings in the High Court, the Court may, on cause shown, allow an application under subsection (4A) above to be made after the time limit specified in that subsection.”.>

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

Pauline McNeill

- 201** In section 14, page 23, line 33, leave out from <refused> to end of line 5 on page 24 and insert <decided to admit a person to bail subject to a movement restriction condition (as well as any other conditions required to be imposed under section 24(4) of this Act) the court may, at its own hand, impose, as a further condition of bail, a remote monitoring requirement.>

Hugh Henry

- 122** In section 14, page 23, line 34, leave out from <(referred) to <applicant”>

Hugh Henry

- 123** In section 14, page 23, line 35, leave out <requirement such as is mentioned in paragraph (b)(ii) below> and insert <remote monitoring requirement>

Hugh Henry

- 124** In section 14, page 23, line 36, leave out <applicant> and insert <person>

Hugh Henry

- 125** In section 14, page 23, line 37, leave out from <condition> to <movements> in line 38 and insert <movement restriction condition>

Hugh Henry

- 126** In section 14, page 24, line 1, leave out from beginning to <applicant> and insert <admit the person>

Hugh Henry

- 127** In section 14, page 24, leave out lines 4 and 5 and insert—

<(ii) impose, as a further condition of bail, a remote monitoring requirement.>

Hugh Henry

128 In section 14, page 24, line 5, at end insert—

<(1A) Where a court—

(a) grants bail to any person charged with or convicted of murder or rape;
and

5 (b) in doing so, imposes a movement restriction condition,
the court may, at its own hand, impose, as a further condition of bail, a remote
monitoring requirement.

(1B) Where a court, in granting bail to a person convicted of murder or rape—

(a) imposes a movement restriction condition; but

10 (b) does not impose a remote monitoring requirement,
the court shall state reasons for not imposing such a requirement.

(1C) In deciding whether to grant bail to a person referred to in paragraph (a) of
subsection (1A) above, the court shall disregard the availability of the power
conferred by that subsection.

15 (1D) Where—

(a) a remote monitoring requirement has been imposed under subsection
(1A) above on a person charged with murder or rape; and

20 (b) subsequently, the charge against the person is reduced,
the court shall, on the application of the person, revoke the remote monitoring
requirement unless it considers that there are exceptional circumstances
justifying the continued imposition of the requirement.

(1E) An application under subsection (1D) above shall be intimated immediately
and in writing to the Crown Agent and the court shall, before determining it,
give the prosecutor an opportunity to be heard.>

Pauline McNeill

128A As an amendment to amendment 128, leave out lines 2 to 7

Pauline McNeill

128B As an amendment to amendment 128, line 12, leave out from <referred> to end of line 14 and
insert <charged with or convicted of murder or rape, the court shall disregard the availability of
the power conferred by subsection (1) above.>

Pauline McNeill

128C As an amendment to amendment 128, line 17, leave out <(1A)> and insert <(1)>

Hugh Henry

- 129** In section 14, page 24, line 6, leave out <make an order under subsection (1)> and insert <impose a remote monitoring requirement under subsection (1) or (1A)>

Pauline McNeill

- 129A** As an amendment to amendment 129, line 2, leave out <or (1A)>

Hugh Henry

- 130** In section 14, page 24, line 7, leave out <applicant> and insert <accused>

Hugh Henry

- 131** In section 14, page 24, line 8, leave out <making an order under subsection (1)> and insert <imposing a remote monitoring requirement under subsection (1) or (1A)>

Pauline McNeill

- 131A** As an amendment to amendment 131, line 2, leave out <or (1A)>

Hugh Henry

- 132** In section 14, page 24, line 9, leave out <applicant> and insert <accused>

Hugh Henry

- 133** In section 14, page 24, line 10, leave out <of the order and, in particular>

Hugh Henry

- 134** In section 14, page 24, line 11, leave out from <to> to <above> in line 12

Hugh Henry

- 135** In section 14, page 24, line 13, leave out from <245C(2)> to <below> in line 14 and insert <24D(3) of this Act>

Hugh Henry

- 136** In section 14, page 24, line 15, leave out <applicant> and insert <accused>

Hugh Henry

- 137** In section 14, page 24, line 17, after first <the> insert <movement restriction>

Hugh Henry

- 138** In section 14, page 24, line 17, leave out <requirement under subsection (1)(b)(ii) above> and insert <remote monitoring requirement>

Hugh Henry

- 139** In section 14, page 24, line 20, leave out <make an order under subsection (1)> and insert <impose a remote monitoring requirement under subsection (1) or (1A)>

Pauline McNeill

- 139A** As an amendment to amendment 139, line 2, leave out <or (1A)>

Hugh Henry

- 140** In section 14, page 24, line 21, leave out <applicant> and insert <accused>

Hugh Henry

- 141** In section 14, page 24, line 24, leave out from beginning to <above> and insert <Subsection (5A) below applies where the court is proposing—
(a) to impose under subsection (1) or (1A) above a remote monitoring requirement>

Pauline McNeill

- 141A** As an amendment to amendment 141, line 3, leave out <or (1A)>

Hugh Henry

- 142** In section 14, page 24, line 25, leave out from <condition> to <movements> and insert <movement restriction condition in relation to which the requirement is proposed to be imposed>

Hugh Henry

- 143** In section 14, page 24, line 26, leave out <applicant> and insert <accused>

Hugh Henry

- 144** In section 14, page 24, line 26, after <places,> insert <or
(b) to vary the movement restriction condition in relation to which the requirement is imposed so as to specify a different place or different places.
(5A) Before imposing the requirement or, as the case may be, varying the condition,>

Hugh Henry

- 145** In section 14, page 24, line 26, after <shall> insert—
<()>

Hugh Henry

- 146** In section 14, page 24, line 27, leave out from first <information> to first <to> in line 28 and insert <a report by an officer of a local authority about—
() the place or places proposed to be specified; and

()>

Hugh Henry

147 In section 14, page 24, line 29, leave out <applicant> and insert <accused>

Hugh Henry

148 In section 14, page 24, line 29, at end insert <; and
() if it considers it necessary, hear the officer who prepared the report.>

Hugh Henry

149 In section 14, page 24, line 30, leave out <(5)> and insert <(5A)>

Hugh Henry

150 In section 14, page 24, line 32, leave out from <makes> to end of line 35 and insert—
<(a) imposes a remote monitoring requirement under subsection (1) or (1A)
above;
(b) revokes such a requirement; or
5 (c) varies or revokes a movement restriction condition in respect of which
such a requirement has been imposed,>

Pauline McNeill

150A As an amendment to amendment 150, line 2, leave out <or (1A)>

Hugh Henry

151 In section 14, page 24, line 36, after <order> insert <containing the requirement, revocation or, as
the case may be, variation>

Hugh Henry

152 In section 14, page 24, line 38, leave out from <requirement> to <(1)(b)(ii)> in line 39 and insert
<remote monitoring requirement imposed under subsection (1) or (1A)>

Pauline McNeill

152A As an amendment to amendment 152, line 2, leave out <or (1A)>

Hugh Henry

153 In section 14, page 24, line 40, leave out <in an order under this section> and insert <on bail>

Hugh Henry

154 In section 14, page 25, line 2, leave out from <condition> to <movements> in line 3 and insert
<movement restriction condition in respect of which a remote monitoring requirement has been
imposed>

Hugh Henry

155 In section 14, page 25, leave out lines 5 to 26

Hugh Henry

156 In section 14, page 25, line 26, at end insert—

<() Nothing in subsection (1) above affects any right which a person has to appeal against a decision refusing to admit the person to bail.

() However, where in a case in which an application has been made under subsection (1) above following a decision of a court to refuse to admit the applicant to bail—

(a) an appeal is taken against the decision; and

(b) the applicant is refused bail under subsection (1) above,

any appeal against the refusal of bail under that subsection shall be conjoined with the appeal referred to in paragraph (a) above.>

Hugh Henry

157 In section 14, page 25, leave out lines 27 to 29 and insert—

<() In this section and sections 24B to 24E of this Act—

(a) “a movement restriction condition” means, in relation to a person admitted to bail, a condition of bail imposed under section 24(4)(b) of this Act restricting the person’s movements, including such a condition requiring the person to be, or not to be, in any place or description of place for, or during, any period or periods or at any time;

(b) “a remote monitoring requirement” means, in relation to a movement restriction condition, a requirement that compliance with the condition be remotely monitored; and

(c) references to the “accused” are references to any person in relation to whom a remote monitoring requirement is imposed or to be imposed under subsection (1) or (1A) above.>

Pauline McNeill

157A As an amendment to amendment 157, line 13, leave out <or (1A)>

Hugh Henry

158 In section 14, page 25, line 33, at end insert—

<24B Regulations as to power to impose remote monitoring requirements under section 24A

(1) The Scottish Ministers may by regulations prescribe—

(a) which courts, or description or descriptions of courts, may impose remote monitoring requirements under 24A(1) or (1A) of this Act;

(b) what method or methods of monitoring compliance with a movement restriction condition may be specified in any such requirement by any such court; and

10 (c) the description or descriptions of persons in respect of whom such requirements may be imposed.

(2) Regulations under subsection (1) above may make different provision in relation to the matters mentioned in paragraphs (b) and (c) of that subsection in relation to different courts or descriptions of courts.

15 (3) Without prejudice to the generality of subsection (1) above, in relation to district courts, regulations under that subsection may make provision as respects such courts by reference to whether the court is constituted by a stipendiary magistrate or by one or more justices.

20 (4) Regulations under subsection (1) above may make such transitional and consequential provisions, including provision in relation to the continuing effect of any remote monitoring requirements imposed under section 24A(1) or (1A) in force when new regulations are made, as the Scottish Ministers consider appropriate.

25 (5) Regulations under subsection (1) above shall be made by statutory instrument and a statutory instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

24C Monitoring of compliance in pursuance of requirements imposed under section 24A

30 (1) Where the Scottish Ministers, in regulations under section 24B(1) of this Act, empower a court or a description of court to impose remote monitoring requirements under section 24A(1) or (1A) of this Act they shall notify the court or, as the case may be, each court of that description of the person or description of person who may be designated by that court for the purpose of monitoring the compliance with any movement restriction condition of the person in respect of whom the requirement is imposed.

35 (2) A court which imposes a remote monitoring requirement under section 24A(1) or (1A) of this Act shall include provisions in the requirement for making a person notified by the Scottish Ministers under subsection (1) above or a description of persons so notified responsible for monitoring the compliance of the person in respect of whom it is imposed with the movement restriction condition in respect of which it is imposed.

40 (3) Where the Scottish Ministers change the person or description of persons notified by them under subsection (1) above, any court which has imposed a remote monitoring requirement under 24A(1) or (1A) of this Act shall, if necessary, vary the requirement accordingly and shall notify the variation to the person in respect of whom the order was made.

45

24D Remote monitoring

- 50 (1) The Scottish Ministers may make such arrangements, including contractual arrangements, as they consider appropriate with such persons, whether legal or natural, as they think fit for the remote monitoring, in pursuance of remote monitoring requirements imposed under section 24A(1) or (1A), of the compliance of persons in respect of whom such requirements are imposed with the movement restriction conditions in respect of which they are imposed.
- 55 (2) Different arrangements may be made under subsection (1) above in relation to different areas or different forms of remote monitoring.
- (3) A court imposing a remote monitoring requirement under section 24A(1) or (1A) of this Act shall include in the requirement, as a further condition of bail, a requirement that the person in respect of whom it is imposed—
- 60 (a) shall, either continuously or for such periods as may be specified, wear or carry a device for the purpose of enabling the remote monitoring of his compliance with the movement restriction condition in respect of which it is imposed to be carried out; and
- (b) shall not tamper with or intentionally damage the device or knowingly allow it to be tampered with or intentionally damaged.
- 65 (4) The Scottish Ministers shall by regulations specify devices which may be used for the purpose of remotely monitoring the compliance of persons in respect of whom remote monitoring requirements have been imposed under section 24A(1) or (1A) of this Act with the movement restriction conditions in respect of which they are imposed.
- 70 (5) Regulations under subsection (4) above shall be made by statutory instrument and a statutory instrument containing such regulations shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

24E Documentary evidence in proceedings for breach of bail conditions being remotely monitored

- 75 (1) This section applies in proceedings against a person (referred to in this section as “the accused”) for an offence under subsection (1)(b) of section 27 of this Act (failure to comply with a condition imposed on bail) where the condition referred to in that subsection is—
- 80 (a) a movement restriction condition in respect of which a remote monitoring requirement has been imposed under section 24A(1) or (1A); or
- (b) a requirement imposed under section 24D(3)(b) of this Act.
- (2) Evidence of—
- 85 (a) in the case referred to in subsection (1)(a) above, the presence or absence of the accused at a particular place at a particular time; or
- (b) in the case referred to in subsection (1)(b) above, any tampering with or damage to a device worn or carried by the accused for the purpose of remotely monitoring his whereabouts,
- 90 may, subject to subsections (5) and (6) below, be given by the production of the document or documents referred to in subsection (3) below.

- 95
- (3) That document or those documents is or are a document or documents bearing to be—
- (a) a statement automatically produced by a device specified in regulations made under section 24D(4) of this Act, by which the accused's whereabouts were remotely monitored; and
- (b) a certificate signed by a person nominated for the purpose of this paragraph by the Scottish Ministers that the statement relates to—
- 100 (i) in the case referred to in subsection (1)(a) above, the whereabouts of the accused at the dates and times shown in the statement; or
- (ii) in the case referred to in subsection (1)(b) above, any tampering with or damage to the device.
- (4) The statement and certificate mentioned in subsection (3) above shall, when produced in the proceedings, be sufficient evidence of the facts set out in them.
- 105 (5) Neither the statement nor the certificate mentioned in subsection (3) above shall be admissible in evidence unless a copy of both has been served on the accused prior to the trial.
- 110 (6) Without prejudice to subsection (5) above, where it appears to the court that the accused has had insufficient notice of the statement or certificate, it may adjourn the trial or make an order which it thinks appropriate in the circumstances.”.>

Pauline McNeill

158A As an amendment to amendment 158, line 6, leave out <or (1A)>

Pauline McNeill

158B As an amendment to amendment 158, line 21, leave out <or (1A)>

Pauline McNeill

158C As an amendment to amendment 158, line 31, leave out <or (1A)>

Pauline McNeill

158D As an amendment to amendment 158, line 37, leave out <or (1A)>

Pauline McNeill

158E As an amendment to amendment 158, line 44, leave out <or (1A)>

Pauline McNeill

158F As an amendment to amendment 158, line 51, leave out <or (1A)>

Pauline McNeill

158G As an amendment to amendment 158, line 56, leave out <or (1A)>

Pauline McNeill

158H As an amendment to amendment 158, line 68, leave out <or (1A)>

Pauline McNeill

158I As an amendment to amendment 158, line 80, leave out <or (1A)>

Margaret Mitchell

73 Leave out section 14

Section 15

Hugh Henry

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

<“() Before determining an application under subsection (2) above, the court shall give the prosecutor an opportunity to be heard.>

Hugh Henry

160 In section 15, page 26, line 5, at end insert <; or

() the sentence to be imposed on, or other method of dealing with, him.>

Hugh Henry

161 In section 15, page 26, line 10, leave out from <and> to end of line 12

Hugh Henry

162 In section 15, page 26, line 20, at end insert <; or

() the sentence to be imposed on, or other method of dealing with, him.>

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”.>

Hugh Henry

163 After section 19, insert—

<Admissibility of prior statements of witnesses

In section 260 (admissibility of prior statements of witnesses) of the 1995 Act, after subsection (4) insert—

- “(5) A prior statement made by a witness shall not, in any proceedings on indictment, be inadmissible by reason only that it is not included in any list of productions lodged by the parties.”.>

Section 20

Hugh Henry

164 In section 20, page 27, line 37, leave out from <minor> to end of line and insert <further modifications of the 1995 Act, including modifications of a minor and consequential nature.>

Schedule

Hugh Henry

165 In the schedule, page 29, line 35, at end insert—

<() after subsection (6) insert—

“(6A) Subsection (6) above does not apply in relation to an accused admitted to bail under section 65(8C) of this Act.”.>

Hugh Henry

166 In the schedule, page 29, line 39, at end insert—

<After section 25 insert—

“25A Failure to accept conditions of bail under section 65(8C): continued detention of accused

5 An accused who—

(a) is, by virtue of subsection (4) of section 65 of this Act, entitled to be admitted to bail, but

(b) fails to accept any of the conditions imposed by the court on bail under subsection (8C) of that section,

10 shall continue to be detained under the committal warrant for so long as he fails to accept any of those conditions.”.>

Pauline McNeill

166A As an amendment to amendment 166, line 10, after <shall> insert <, subject to section 65(1) and (1A),>

Hugh Henry

167 In the schedule, page 29, line 41, at end insert—

<() in subsection (4A)(a), for the words from “under” in the first place where it occurs to “71(2)” substitute “in accordance with section 71(2) or 72(6)(b)(i)”.>

Hugh Henry

168 In the schedule, page 29, line 41, at end insert—

<In section 28 (breach of bail conditions: arrest of offender etc.), after subsection (4) insert—

“(4A) Subsection (2) above shall have effect in relation to an accused released on bail by virtue of section 65(8C) of this Act as if the reference to the court to which his application for bail was first made were a reference to the court or judge which admitted him to bail under that section; and the references to “court” in subsection (4) above shall include any such court or judge.”.

In section 31 (bail review on prosecutor’s application), after subsection (3) insert—

“(3A) In relation to an accused admitted to bail under section 65(8C) of this Act—

- (a) an application may be made under subsection (1) above only in relation to the conditions imposed on bail; and
- (b) paragraph (a) of subsection (3) above shall not apply in relation to any such application.”.

In section 32 (bail appeal), after subsection (2) insert—

“(2A) The public prosecutor may, in relation to an accused admitted to bail under section 65(8C) of this Act, appeal under subsection (2) above only in relation to the conditions imposed on bail.”.>

Hugh Henry

169 In the schedule, page 30, line 9, at end insert—

<In section 54 (insanity in bar of trial), in subsection (1)(b), after “diet” in the first place where it occurs insert “or, in proceedings on indictment where the finding is made at or before the first diet (in the case of proceedings in the sheriff court) or the preliminary hearing (in the case of proceedings in the High Court), that diet or, as the case may be, hearing”.

In section 56 (examination of facts: supplementary provisions)—

- (a) in subsection (1)—
 - (i) after “diet” in the first place where it occurs insert “or, in proceedings on indictment, at the first diet (in the case of proceedings in the sheriff court) or the preliminary hearing (in the case of proceedings in the High Court)”,
 - (ii) after “diet” in the second place where it occurs insert “, first diet or, as the case may be, preliminary hearing”.
- (b) subsection (2) is repealed.>

Hugh Henry

170 In the schedule, page 30, line 28, leave out <a> and insert <the>

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.”.>

Pauline McNeill

191 In the schedule, page 30, line 40, leave out from beginning to the end of line 6 on page 31

Hugh Henry

171 In the schedule, page 31, line 4, leave out from <not> to <diet> and insert <before the jury is sworn to try the case>

Hugh Henry

172 In the schedule, page 31, line 8, leave out <68(3) (productions)> and insert <68 (productions)—
(a) in subsection (3)>

Hugh Henry

173 In the schedule, page 31, line 14, at end insert—
<(b) in subsection (4)—
(i) in paragraph (a), for the words from “the accused” to “diet” substitute “the case is to be tried in the High Court”,
(ii) in paragraph (b), for the words from “he” to “diet” substitute “the case is to be tried in the sheriff court”.>

Hugh Henry

174 In the schedule, page 31, line 22, leave out <71(2) (first diet),> and insert <71 (first diet)—
(a) in subsection (2),>

Hugh Henry

175 In the schedule, page 31, line 24, at end insert—
<(b) subsections (8) and (8A) are repealed.>

Hugh Henry

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

Hugh Henry

176 In the schedule, page 31, line 27, at end insert—
<In section 76 (procedure where accused desires to plead guilty), in subsection (3), after “diet” in the third place where it occurs insert “or, where the accused has been indicted to the High Court, the preliminary hearing”.>

Hugh Henry

177 In the schedule, page 31, line 29, leave out <(1)(a),> and insert <(1), in paragraph (a),>

Hugh Henry

178 In the schedule, page 31, line 40, leave out <(4)(b)(ii)> and insert <(4)(a)(ii)>

Hugh Henry

179 In the schedule, page 31, line 41, leave out <diet> and insert <hearing>

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

Hugh Henry

180 In the schedule, page 32, line 28, at end insert—
<() the words from “(that” to “Act)” are repealed,>

Hugh Henry

181 In the schedule, page 32, line 30, at end insert—
<() in sub-paragraph (ii), the words from “(that” to “Act)” are repealed,>

Hugh Henry

182 In the schedule, page 33, line 26, after <judge> insert—
<()>

Hugh Henry

183 In the schedule, page 33, line 28, at end insert—
<() in subsection (1)(b)(i), for the words “that sitting” substitute “the same day”.>

Hugh Henry

184 In the schedule, page 34, line 8, at end insert—
<In section 245A (restriction of liberty orders), in subsection (6)—
(a) after “shall” insert “—
(a)”,
(b) for the words from “information” in the first place where it first occurs to “to” in the second place where it second occurs substitute “a report by an officer of a local authority about—
(i) the place or places proposed to be specified; and
(ii)”, and

- (c) at the end insert “; and
 - (b) if it considers it necessary, hear the officer who prepared the report.”

In section 245C (remote monitoring), in subsection (2)—

- (a) after “offender” insert “—
 - (a)”, and
- (b) at the end insert “, and
 - (b) shall not tamper with or intentionally damage the device or knowingly allow it to be tampered with or intentionally damaged.”.

In section 245E (variation of restriction of liberty order)—

- (a) after subsection (4) insert—
 - “(4A) Before varying a restriction of liberty order so as to require the offender to remain in a specified place or places or so as to specify a different place or different places in which the offender is to remain, the court shall—
 - (a) obtain and consider a report by an officer of a local authority about—
 - (i) the place or places proposed to be specified, and
 - (ii) the attitude of persons likely to be affected by any enforced presence there of the offender; and
 - (b) if it considers it necessary, hear the officer who prepared the report.”, and
- (b) in subsection (6)(a)—
 - (i) after “places” in the first place where it occurs insert “—
 - (i)”,
 - (ii) for the words from “information” in the first place where it occurs to “to” in the second place where it occurs substitute “a report by an officer of a local authority about the place or places proposed to be specified and”
 - (ii) after “offender;” insert “and
 - (ii) if it considers it necessary, hear the officer who prepared the report;”.>

Hugh Henry

- 185** In the schedule, page 37, line 4, at end insert <and, where in any case a further preliminary hearing is held or to be held under this Act, includes the diet consisting of that further preliminary hearing>

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,>

Marlyn Glen

190 In the long title, page 1, line 11, leave out <reluctant> and insert <obstructive>

Hugh Henry

186 In the long title, page 1, line 11, leave out second <and> and insert <, to enable notices and other documents to be served on the accused through his solicitor,>

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);>

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2004.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish
Parliamentary Corporate Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate
Body by The Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now
trading as The Stationery Office Ltd, which is responsible for printing and publishing
Scottish Parliamentary Corporate Body publications.

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 622 7017

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 0207 242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF12BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office Scottish Parliament Documentation
Helpline may be able to assist with additional information
on publications of or about the Scottish Parliament,
their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by The Stationery Office Limited

ISBN 0 338 20632 9

£3.30

ISBN 0-33-820632-9

