

Criminal Procedure (Amendment) (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 22
Long Title

Schedule

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

Section 1

Margaret Mitchell

- 91** In section 1, page 2, line 7, after <diet> insert—
<() in any case in which the 110 day rule applies, not less than 14 clear days;
() in any other case,>

Hugh Henry

- 1** In section 1, page 2, line 19, after <case> insert—
<() in respect of which section 288E of this Act applies; or
()>

Hugh Henry

- 2** In section 1, page 2, line 19, leave out <288E(2)> and insert <288F(2)>

Hugh Henry

- 3** In section 1, page 2, line 35, after <applies;> insert—
<() in respect of which section 288E of this Act applies;>

Hugh Henry

- 4** In section 1, page 2, line 36, leave out <288E(2)> and insert <288F(2)>

Hugh Henry

- 5** In section 1, page 3, line 4, at end insert—
<() any child witness notice under section 271A(2) or vulnerable witness application under section 271C(2) appointed to be disposed of at the preliminary hearing;>

Hugh Henry

- 6 In section 1, page 3, line 5, leave out <or notice>

Hugh Henry

- 7 In section 1, page 3, line 6, leave out <271A(2), 271C(2),>

Hugh Henry

- 8 In section 1, page 3, line 6, leave out <288E(2)> and insert <288F(2)>

Hugh Henry

- 9 In section 1, page 3, line 6, leave out <or lodged>

Hugh Henry

- 10 In section 1, page 3, line 21, leave out <271A(8)> and insert <271A(7)>

Hugh Henry

- 11 In section 1, page 4, line 12, at end insert—

<() In appointing a trial diet under subsection (1) above, the court may, if satisfied that it is appropriate to do so, indicate that the diet is to be a floating diet for the purposes of section 83A of this Act.>

Nicola Sturgeon

- 11A As an amendment to amendment 11, line 2, leave out <if satisfied that it is appropriate to do so> and insert <on cause shown>

Margaret Mitchell

- 92 In section 1, page 4, line 13, leave out <140> and insert <110>

Margaret Mitchell

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

Margaret Mitchell

- 94 In section 1, page 4, line 38, leave out <140> and insert <110>

Margaret Mitchell

- 95 In section 1, page 5, line 3, leave out <65(5)> and insert <65(7)>

Margaret Mitchell

- 96 In section 1, page 5, line 3, leave out <140> and insert <110>

Margaret Mitchell

97 In section 1, page 5, line 6, leave out <140> and insert <110>

Margaret Mitchell

98 In section 1, page 5, line 28, leave out <140> and insert <110>

Margaret Mitchell

99 In section 1, page 5, line 28, leave out <(4)(aa)(ii)> and insert <(4)(b)>

Margaret Mitchell

100 In section 1, page 5, line 30, leave out <(5)> and insert <(7)>

Hugh Henry

12 In section 1, page 7, line 16, after <accused> insert <is a body corporate;
() it>

Hugh Henry

13 In section 1, page 7, line 17, leave out <his> and insert <its>

Hugh Henry

14 In section 1, page 7, line 19, leave out from <behalf> to <accused> in line 20 and insert <its
behalf at the hearing,
it>

Nicola Sturgeon

101 In section 1, page 7, line 26, after <Act;> insert—
<() shall ask the prosecutor whether he has provided to the accused’s legal
representative all material evidence obtained during the course of the
investigation that is likely to support the accused’s defence of the case
against him or which undermines the prosecution case;>

Nicola Sturgeon

102 In section 1, page 7, line 29, at end insert—
<() Nothing in subsection (3) above authorises the disclosure of information
subject to legal privilege.>

Section 2

Margaret Mitchell

103 In section 2, page 8, line 10, leave out <jointly>

Hugh Henry

- 15 In section 2, page 8, line 10, leave out <jointly lodge with the Clerk of Justiciary> insert—
<() communicate with each other with a view to jointly preparing>

Hugh Henry

- 16 In section 2, page 8, line 12, leave out <a> and insert <the>

Hugh Henry

- 17 In section 2, page 8, line 12, at end insert <; and
() lodge the written record with the Clerk of Justiciary.>

Hugh Henry

- 18 In section 2, page 8, line 13, leave out <a> and insert <the>

Hugh Henry

- 19 In section 2, page 8, line 15, leave out <A> and insert <The>

Hugh Henry

- 20 In section 2, page 8, line 17, at end insert <and
() be lodged in such manner,>

Hugh Henry

- 21 In section 2, page 8, line 19, leave out <A> and insert <The>

Nicola Sturgeon

- 104 In section 2, page 8, line 21, at end insert—
<() A written record shall not contain information subject to legal privilege.>

Nicola Sturgeon

- 105 In section 2, page 8, line 22, after <section> insert <and in section 72D>

Nicola Sturgeon

- 106 In section 2, page 8, line 31, at end insert <; and
“information subject to legal privilege” means—
(a) communications between a professional legal adviser and his client; or
(b) communications made in connection with or in contemplation of legal proceedings and for the purposes of these proceedings,

being communications which would in legal proceedings be protected from disclosure by virtue of any rule of law relating to the confidentiality of communications.>

Section 3

Hugh Henry

22 In section 3, page 8, line 39, at end insert—

<() in paragraph (aa), in sub-paragraph (ii), for the words “diet, section 73(3A)” substitute “hearing, section 72(6)(d)”,>

Hugh Henry

23 In section 3, page 9, line 1, leave out <that paragraph> and insert <paragraph (aa)>

Hugh Henry

24 In section 3, page 9, line 2, leave out <(aa)> and insert <(ab)>

Section 4

Hugh Henry

25 In section 4, page 9, line 26, at end insert—

<() In section 288E of that Act (prohibition of personal conduct of defence in certain cases involving child witnesses under the age of 12)—

(a) in subsection (1), after “conducting” insert—

“(a) his case in person at or for the purposes of a preliminary hearing; and
(b)”,

(b) in subsection (6)—

(i) before paragraph (a) insert—

“(za) where he is indicted to the High Court in respect of the offence, that his case at or for the purposes of the preliminary hearing may be conducted only by a lawyer,”,

(ii) in paragraph (c), after the word “of” insert “the conduct of his case at or for the purposes of the preliminary hearing (if he is indicted to the High Court in respect of the offence) or”.>

Hugh Henry

26 In section 4, page 9, line 27, leave out <288E> and insert <288F>

Section 8

Hugh Henry

27 In section 8, page 10, line 7, after third <diet> insert <and, if it is adjourned, the adjourned diet>

Nicola Sturgeon

107 In section 8, page 10, line 12, at end insert—

<() Where a case has been continued by virtue of subsection (1) above, intimation of the intention to commence the trial on a particular date shall be given to the accused and the accused’s legal representative by the Clerk of Justiciary at least 48 hours prior to that date.>

Hugh Henry

28 In section 8, page 10, line 13, after <diet> insert <or adjourned diet>

Hugh Henry

29 In section 8, page 10, line 16, after <diet> insert <or adjourned trial diet>

Nicola Sturgeon

108 In section 8, page 10, line 19, at end insert—

<() 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 trial diet; or
- (b) where the solicitor has instructed counsel for the purposes of the conduct of the accused’s case at the trial diet, either the solicitor or that counsel, or both of them; 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 9

Colin Fox

109 In section 9, page 10, line 40, leave out subsection (5)

Margaret Mitchell

110 In section 9, page 11, leave out lines 3 to 13 and insert—

<() in paragraph (b),>

Margaret Mitchell

111 In section 9, page 11, line 18, leave out <subsections (1)(a) and (4)(aa)(i)> and insert <subsection (1)(a)>

Margaret Mitchell

- 112 In section 9, page 11, line 20, leave out subsections (7) and (8)

Colin Fox

- 113 In section 9, page 11, line 35, leave out subsection (9)

Margaret Mitchell

- 114 In section 9, page 12, line 3, after <(5)> insert <or, as the case may be, (7)>

Hugh Henry

- 30 In section 9, page 12, line 6, at end insert—
- <(8D) Where such an application is made but is refused and the prosecutor appeals against the refusal, the accused—
 - (a) may continue to be detained under the committal warrant for no more than 72 hours from the granting of bail under subsection (8C) above or for such longer period as the High Court may allow; and
 - (b) on expiry of that period, shall, whether the appeal has been disposed of or not, be released on bail subject to the conditions imposed.>

Section 5

Hugh Henry

- 31 In section 5, page 14, line 6, leave out <in which>

Hugh Henry

- 32 In section 5, page 14, line 7, at beginning insert <where>

Hugh Henry

- 33 In section 5, page 14, line 8, after <applies;> insert—
- <() in respect of which section 288E of this Act applies;>

Hugh Henry

- 34 In section 5, page 14, line 9, at beginning insert <in which>

Hugh Henry

- 35 In section 5, page 14, line 9, leave out <288E(2)> and insert <288F(2)>

Section 10A

Hugh Henry

- 36 In section 10A, page 14, line 38, after <proceed)> insert <of the 1995 Act>

Hugh Henry

37 In section 10A, page 15, line 18, leave out <at a trial diet>

Hugh Henry

38 In section 10A, page 15, line 19, at end insert <in which a trial diet has been appointed>

Hugh Henry

39 In section 10A, page 15, line 22, leave out <is for any> and insert <falls or is for any other>

Section 11

Nicola Sturgeon

115 In section 11, page 16, line 24, after <after> insert <all the>

Hugh Henry

40 In section 11, page 16, line 24, leave out <against the accused> and insert <which implicates the accused in respect of the offence charged in the indictment or, where two or more offences are charged in the indictment, any of them>

Bill Butler

40A As an amendment to amendment 40, line 1, after <which> insert <substantially>

Hugh Henry

41 In section 11, page 16, line 26, leave out from beginning to <Act;> in line 27

Hugh Henry

42 In section 11, page 16, line 29, leave out <after hearing the parties>

Hugh Henry

43 In section 11, page 16, line 31, after <prosecutor> insert <and after hearing the parties on the motion>

Hugh Henry

44 In section 11, page 16, line 32, leave out from <(including> to <indictment)> in line 34

Hugh Henry

45 In section 11, page 16, line 34, leave out from <(including> to <returned)> in line 35

Hugh Henry

46 In section 11, page 16, line 36, leave out from first <the> to <it> and insert <a motion is made under subsection (2A) above, the court>

Hugh Henry

- 47 In section 11, page 16, line 38, after <of> insert—
- <(i) representing the accused’s interests at the hearing on the motion;
and
 - (ii) if the motion is granted,>

Nicola Sturgeon

- 116 In section 11, page 17, line 2, leave out from <act> to first <and> in line 4 and insert <represent the interests of the accused in proceedings in respect of which the appointment has been made.
- (2CA) A solicitor so appointed—
- (a) shall—
 - (i) act in accordance with his own professional judgement in representing the interests of the accused; and
 - (ii) not be responsible to the accused;
 - (b) may, if he thinks fit, withdraw.
- (2D) A solicitor so appointed>

Nicola Sturgeon

- 117 In section 11, page 17, leave out lines 7 to 13

Hugh Henry

- 48 In section 11, page 17, line 13, leave out <of the accused’s defence at the trial> and insert <referred to in subsection (2) or, as the case may be, (2B) above.>

Hugh Henry

- 49 In section 11, page 17, line 29, after <shall> insert <, where the accused is a body corporate,>

Hugh Henry

- 50 In section 11, page 17, line 30, leave out <he does not appear> and insert <it does not appear as mentioned in section 70(4) of this Act or by counsel or a solicitor>

Hugh Henry

- 51 In section 11, page 17, line 34, leave out <his> and insert <its>

Hugh Henry

- 52 In section 11, page 17, line 36, leave out <he does not appear> and insert <it does not appear as mentioned in paragraph (a) above>

Nicola Sturgeon

- 118 In section 11, page 17, line 36, after <it> insert <after all the evidence has been led>

Hugh Henry

53 In section 11, page 17, line 37, leave out <his> and insert <its>

Hugh Henry

54 In section 11, page 18, leave out lines 8 to 11

Section 12

Hugh Henry

55 In section 12, page 18, line 30, at end insert—

<() For the purposes of subsection (2) above, a witness who, having been duly cited to any diet, fails to appear at the diet is to be presumed, in the absence of any evidence to the contrary, to have so failed deliberately and obstructively.>

Margaret Mitchell

69* In section 12, page 20, line 27, leave out <24A(1) or (1A)> and insert <24A(1A)>

Margaret Mitchell

70* In section 12, page 20, line 30, leave out <24A(1) or (1A)> and insert <24A(1A)>

Margaret Mitchell

71* In section 12, page 20, line 39, leave out <(1) or>

Section 14

Margaret Mitchell

72 In section 14, page 29, leave out lines 22 to 32

Margaret Mitchell

73 In section 14, page 30, line 18, leave out <(1) or>

Margaret Mitchell

74 In section 14, page 30, line 20, leave out <(1) or>

Margaret Mitchell

75 In section 14, page 30, line 32, leave out <(1) or>

Margaret Mitchell

76 In section 14, page 30, line 36, leave out <(1) or>

Margaret Mitchell

77 In section 14, page 31, line 11, leave out <(1) or>

Margaret Mitchell

78 In section 14, page 31, line 20, leave out <(1) or>

Margaret Mitchell

79 In section 14, page 31, leave out lines 29 to 37

Margaret Mitchell

80 In section 14, page 32, line 6, leave out <(1) or>

Margaret Mitchell

81 In section 14, page 32, line 15, leave out <24A(1) or (1A)> and insert <24A(1A)>

Margaret Mitchell

82 In section 14, page 32, line 30, leave out <24A(1) or (1A)> and insert <24A(1A)>

Hugh Henry

56 In section 14, page 32, line 34, after <regulations> insert <(other than the first such regulations)>

Hugh Henry

57 In section 14, page 32, line 35, at end insert—

<() The first regulations under subsection (1) above shall not be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Parliament.>

Margaret Mitchell

83 In section 14, page 32, line 40, leave out <24A(1) or (1A)> and insert <24A(1A)>

Hugh Henry

58 In section 14, page 32, line 42, leave out <person> and insert <persons>

Margaret Mitchell

84 In section 14, page 33, line 1, leave out <24A(1) or (1A)> and insert <24A(1A)>

Margaret Mitchell

85 In section 14, page 33, line 9, leave out <24A(1) or (1A)> and insert <24A(1A)>

Margaret Mitchell

86 In section 14, page 33, line 16, leave out <24A(1) or (1A)> and insert <24A(1A)>

Margaret Mitchell

87 In section 14, page 33, line 21, leave out <24A(1) or (1A)> and insert <24A(1A)>

Margaret Mitchell

88 In section 14, page 33, line 33, leave out <24A(1) or (1A)> and insert <24A(1A)>

Margaret Mitchell

89 In section 14, page 34, line 2, leave out <24A(1) or (1A)> and insert <24A(1A)>

Section 19

Nicola Sturgeon

120 In section 19, page 36, line 25, at end insert <; and
() served on the witness in person by any officer of law.>

Nicola Sturgeon

121 In section 19, page 36, line 35, at end insert—
<() Nothing in this section authorises the disclosure of information subject to legal privilege.
() In this section “information subject to legal privilege” means—
(a) communications between a professional legal adviser and his client; or
(b) communications made in connection with or in contemplation of legal proceedings and for the purposes of these proceedings,
being communications which would in legal proceedings be protected from disclosure by virtue of any rule of law relating to the confidentiality of communications.>

Schedule

Hugh Henry

59 In the schedule, page 39, line 33, at end insert—
<In section 23A (bail and liberation where person already in custody), in both subsections (1) and (4), for “or 23” substitute “, 23 or 65(8C)”.>

Hugh Henry

60 In the schedule, page 40, line 21, leave out from <Subsection> to <Act> in line 22 and insert <In the case of an accused released on bail by virtue of section 65(8C) of this Act—
(a) subsection (2) above shall have effect>

Hugh Henry

61 In the schedule, page 40, line 24, leave out from <and> to end of line 25 and insert—

<(b) subsection (4) above shall not apply and subsection (4B) below shall apply instead.

(4B) Where an accused referred to in subsection (4A) above is, under subsection (2) or (3) above, brought before the court or judge which admitted him to bail under section 65(8C)—

(a) the court or judge shall give the prosecutor an opportunity to make an application under section 65(5) of this Act; and

(b) if the prosecutor does not make such an application or, if such an application is made but is refused, the court or judge may—

(i) release the accused under the original order granting bail; or

(ii) vary the order granting bail so as to contain such conditions as the court or judge thinks necessary to impose to secure that the accused complies with the requirements of paragraphs (a) to (d) of section 24(5) of this Act.”.>

Hugh Henry

62 In the schedule, page 40, line 35, at end insert—

<() in subsection (7), after “granted” insert “(other than an accused to whom subsection (7B) below applies)”,

() after that subsection insert –

“(7B) Where, in relation to an accused admitted to bail under section 65(8C) of this Act, the public prosecutor appeals against the conditions imposed on bail, the accused—

(a) may continue to be detained under the committal warrant for no more than 72 hours from the granting of bail or for such longer period as High Court may allow; and

(b) on expiry of that period, shall, whether the appeal has been disposed of or not, be released on bail subject to the conditions imposed.”.>

Pauline McNeill

90 In the schedule, page 42, line 23, leave out <in special circumstances> and insert <, on cause shown,>

Hugh Henry

63 In the schedule, page 45, line 11, leave out paragraph 24

Hugh Henry

64 In the schedule, page 47, line 15, leave out from <“trial”> to end of line 19 and insert <the words “no later than 14 clear days before the trial diet” substitute “by the required time”,

(b) in subsection (4), for the words “the time limit specified in subsection (2) above” substitute “the required time”,

(c) in subsection (5), for the words from “that” where last occurring to the end substitute “under subsection (5A) below.”,

- (d) after that subsection insert—
 - “(5A) That order is an order—
 - (a) in the case of proceedings in the High Court where the preliminary hearing is yet to be held, appointing the child witness notice to be disposed of at that hearing,
 - (b) in the case of proceedings on indictment in the sheriff court where the first diet is yet to be held, appointing the child witness notice to be disposed of at that diet, or
 - (c) in any other case, appointing a diet to be held before the trial diet and requiring the parties to attend the diet.”,
- (e) in subsection (7), for paragraph (b) substitute—
 - “(b) where the court does not so order—
 - (i) in the case of proceedings on indictment where this subsection applies at or before the preliminary hearing or, as the case may be, the first diet, at that hearing or diet make an order under subsection (9) below, or
 - (ii) in any other case, make an order appointing a diet to be held before the trial diet and requiring the parties to attend the diet.”,
- (f) in subsection (8), for “(5)(c) or (7)(b)” substitute “(5A)(c) or (7)(b)(ii)”,
- (g) after subsection (8) insert—
 - “(8A) Subsection (9) below applies to—
 - (a) a preliminary hearing or first diet, so far as the court is—
 - (i) by virtue of an order under subsection (5A)(a) or (b) above, disposing of a child witness notice at the hearing or diet, or
 - (ii) by virtue of subsection (7)(b)(i) above, to make an order under subsection (9) above at the hearing or diet, and
 - (b) a diet appointed under subsection (5A)(c) or (7)(b)(ii) above.”,
- (h) in subsection (9), for the words “diet under this subsection” substitute “hearing or diet to which this subsection applies”,
- (i) in subsection (11), for the words “diet under subsection (9) above” substitute “hearing or diet to which subsection (9) above applies”,
- (j) in subsection (12) for the words from “under” to the end substitute “appointed under subsection (5A)(c) or (7)(b)(ii) above in any case may be conjoined with any other diet to be held before the trial diet in the case.”,
- (k) after subsection (13) insert—
 - “(13A) In subsections (2) and (4) above, “the required time” means—
 - (a) in the case of proceedings in the High Court, no later than 14 clear days before the preliminary hearing,
 - (b) in the case of proceedings on indictment in the sheriff court, no later than 7 clear days before the first diet,
 - (c) in any other case, no later than 14 clear days before the trial diet.”.>

Hugh Henry

- 65** In the schedule, page 47, line 22, leave out from <“trial”> to end of line 26 and insert <the words “not later than 14 clear days before the trial diet” substitute “by the required time”,
- (b) in subsection (4), for the words “the time limit specified in subsection (2) above” substitute “the required time”,
 - (c) in subsection (5)(b), for the words from “order” to the end substitute “make an order under subsection (5A) below.”,
 - (d) after subsection (5) insert—
 - “(5A) That order is an order—
 - (a) in the case of proceedings in the High Court where the preliminary hearing is yet to be held, appointing the vulnerable witness application to be disposed of at that hearing,
 - (b) in the case of proceedings on indictment in the sheriff court where the first diet is yet to be held, appointing the vulnerable witness application to be disposed of at that diet, or
 - (c) in any other case, appointing a diet to be held before the trial diet and requiring the parties to attend the diet.”,
 - (e) in subsection (6), for “(5)(b)” substitute “(5A)(c)”,
 - (f) after that subsection insert—
 - “(6A) Subsection (7) below applies to—
 - (a) a preliminary hearing or first diet so far as the court is, by virtue of an order under subsection (5A)(a) or (b) above disposing of a vulnerable witness application at the hearing or diet, and
 - (b) a diet appointed under subsection (5A)(c) above.”,
 - (g) in subsection (7), for the words “diet under this subsection” substitute “hearing or diet to which this subsection applies”,
 - (h) in subsection (9), for the words “diet under subsection (7) above” substitute “hearing or diet to which subsection (7) above applies”,
 - (i) in subsection (10), for the words from “under” to the end substitute “appointed under subsection (5A)(c) above in any case may be conjoined with any other diet to be held before the trial diet in the case.”
 - (j) after subsection (11) insert—
 - “(12) In subsections (2) and (4) above, “the required time” means—
 - (a) in the case of proceedings in the High Court, no later than 14 clear days before the preliminary hearing,
 - (b) in the case of proceedings on indictment in the sheriff court, no later than 7 clear days before the first diet,
 - (c) in any other case, no later than 14 clear days before the trial diet.”.>

Hugh Henry

- 66** In the schedule, page 48, line 29, leave out <“trial” substitute “relevant diet”> and insert <“not less than 14 clear days before the trial” substitute “by the required time”>

Hugh Henry

- 67** In the schedule, page 48, line 31, leave out from <diet> to end of line 33 and insert <time> means—
- (a) in the case of proceedings in the High Court—
 - (i) not less than 14 clear days before the preliminary hearing, or
 - (ii) such later time, being not less than 14 clear days before the trial, as the court may, in special circumstances, allow,
 - (b) in any other case, not less than 14 clear days before the trial.”.>

Hugh Henry

- 68** In the schedule, page 49, line 19, at end insert—
- <In section 288C (prohibition of personal conduct of defence in cases of certain sexual offences)—
- (a) in subsection (1)(b), for the words from “or” to the end substitute “and in any victim statement proof relating to any such offence”,
 - (b) after subsection (7) insert—
 - “(8) In subsection (1)(b) above, “victim statement proof” means any proof ordered in relation to—
 - (a) a victim statement made by virtue of subsection (2) (or by virtue of that subsection and subsection (6)) of section 14 of the Criminal Justice (Scotland) Act 2003 (asp 7), or
 - (b) a statement made by virtue of subsection (3) of that section in relation to such a victim statement.”.
- In section 288D (appointment of solicitor by court in cases to which section 288C applies), in subsection (2)(a)(ii)—
- (a) for the words “proof ordered” substitute “victim statement proof”,
 - (b) for “288C(1)” substitute “288C(1)(b)”.>

Long Title

Margaret Mitchell

- 122** In the long title, page 1, line 3, leave out from second <to> to <Court;> in line 4

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ISBN 0 338 20645 0

£2.90

ISBN 0-33-820645-0



9 780338 206459