

# Management of Offenders (Scotland) Bill

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## Revised Groupings of Amendments for Stage 2

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

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

### Groupings of amendments

#### **Part 1 terminology: relevant person**

2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 68, 69, 70

#### *Notes on amendments in this group*

Amendments 54 and 55 are pre-empted by amendment 93 in group “Minor and technical”

Amendment 58 is pre-empted by amendment 95 in group “Details in relation to monitoring”

Amendment 59 is pre-empted by amendment 99 in group “Details in relation to monitoring”

#### **Social work involvement**

78

#### **List of relevant disposals**

81, 82, 83

#### **Details in relation to monitoring**

84, 85, 86, 87, 88, 89, 91, 92, 94, 95, 96, 97, 98, 99, 100

#### *Notes on amendments in this group*

Amendment 95 pre-empted amendment 58 in group “Part 1 terminology: relevant person”

Amendment 99 pre-empted amendment 59 in group “Part 1 terminology: relevant person”

#### **Duties before releasing a prisoner on licence**

31, 131

**Contractual arrangements for the system**

90

**Deemed breach of disposal or conditions**

73, 74, 132

**Minor and technical**

93, 104

*Notes on amendments in this group*

Amendment 93 pre-empts amendments 54 and 55 in group “Part 1 terminology: relevant person”

**SSI procedure**

101

**Supervised release orders**

103

**Enforcement of fines etc.**

1, 102

**Part 2: regulations for treating certain convictions as spent etc.**

105, 106, 107, 108, 109, 110

**Part 3: miscellaneous as to Parole Board**

111, 112, 113, 124, 125, 126, 127

**Timing of release of prisoners**

114

**Home detention curfew: eligibility and operation**

115, 118, 119, 120

**Return to prison of person whose licence is revoked**

116, 117

**Parole Board: test for release and summary of recommendations**

128

**Parole Board: provision of assistance at a hearing**

79

**Persons unlawfully at large**

121, 122, 123

**Preparing prisoner for release**

64, 65, 66, 67, 129

**FAI where death caused by person subject to a curfew condition**

71, 71A, 72

**Assessment of risk posed by offenders**

75, 134

**Home detention curfew: evaluation etc.**

130

**Restriction of liberty orders**

133

**Commencement provisions**

76, 76A, 80

**THIS IS NOT THE MARSHALLED LIST**

**Amendments in debating order**

**Part 1 terminology: relevant person**

**Daniel Johnson**

- 2 In section 1, page 1, line 9, leave out <person (“offender”)> and insert <relevant person>

**Daniel Johnson**

- 3 In section 1, page 1, line 10, leave out <offender> and insert <relevant person>

**Daniel Johnson**

- 4 In section 1, page 1, line 14, leave out <offender> and insert <relevant person>

**Daniel Johnson**

- 5 In section 1, page 1, line 18, leave out <offender> and insert <relevant person>

**Daniel Johnson**

- 6 In section 1, page 1, line 22, leave out <offender> and insert <relevant person>

**Daniel Johnson**

- 7 In section 1, page 1, line 23, leave out <offender> and insert <relevant person>

**Daniel Johnson**

- 8 In section 1, page 2, line 2, leave out <offender’s> and insert <relevant person’s>

**Daniel Johnson**

- 9\* In section 2, page 2, line 4, leave out <an offender’s> and insert <a relevant person’s>

**Daniel Johnson**

- 10 In section 2, page 2, line 5, leave out <offender> and insert <relevant person>

**Daniel Johnson**

- 11 In section 2, page 2, line 5, leave out <offender’s> and insert <relevant person’s>

**Daniel Johnson**

- 12 In section 2, page 2, line 8, leave out <offender> and insert <relevant person>

**Daniel Johnson**

- 13 In section 4, page 2, line 40, leave out <an offender> and insert <a relevant person>

**Daniel Johnson**

- 14 In section 4, page 3, line 1, leave out <an offender> and insert <a relevant person>

**Daniel Johnson**

- 15 In section 4, page 3, line 2, leave out <an offender> and insert <a relevant person>

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**Daniel Johnson**

16 In section 4, page 3, line 6, leave out <an offender's> and insert <a relevant person's>

**Daniel Johnson**

17 In section 4, page 3, line 7, leave out <an offender's> and insert <a relevant person's>

**Daniel Johnson**

18 In section 5, page 3, line 12, leave out <person ("offender")> and insert <relevant person>

**Daniel Johnson**

19 In section 5, page 3, line 13, leave out <offender> and insert <relevant person>

**Daniel Johnson**

20 In section 5, page 3, line 16, leave out <offender> and insert <relevant person>

**Daniel Johnson**

21 In section 5, page 3, line 20, leave out <offender> and insert <relevant person>

**Daniel Johnson**

22 In section 5, page 3, line 24, leave out <offender> and insert <relevant person>

**Daniel Johnson**

23 In section 5, page 3, line 25, leave out <offender> and insert <relevant person>

**Daniel Johnson**

24 In section 5, page 3, line 28, leave out <offender> and insert <relevant person>

**Daniel Johnson**

25 In section 5, page 3, line 29, leave out <offender> and insert <relevant person>

**Daniel Johnson**

26 In section 6, page 3, line 34, leave out <an offender> and insert <a relevant person>

**Daniel Johnson**

27 In section 6, page 3, line 36, leave out <offender's> and insert <relevant person's>

**Daniel Johnson**

28 In section 6, page 4, line 1, leave out <offender> and insert <relevant person>

**Daniel Johnson**

29 In section 7, page 4, line 22, leave out <an offender's> and insert <a relevant person's>

**Daniel Johnson**

30 In section 7, page 4, line 23, leave out <an offender's> and insert <a relevant person's>

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**Daniel Johnson**

32 In section 8, page 4, line 33, leave out <an offender's> and insert <a relevant person's>

**Daniel Johnson**

33 In section 8, page 4, line 34, leave out <an offender> and insert <a relevant person>

**Daniel Johnson**

34 In section 9, page 5, line 3, leave out <an offender> and insert <a relevant person>

**Daniel Johnson**

35 In section 9, page 5, line 7, leave out <an offender> and insert <a relevant person>

**Daniel Johnson**

36 In section 9, page 5, line 8, leave out <an offender> and insert <a relevant person>

**Daniel Johnson**

37 In section 10, page 5, line 22, leave out <an offender> and insert <a relevant person>

**Daniel Johnson**

38 In section 11, page 5, line 34, leave out <offender> and insert <relevant person>

**Daniel Johnson**

39 In section 11, page 5, line 36, leave out <offender> and insert <relevant person>

**Daniel Johnson**

40 In section 11, page 6, line 3, leave out <offender> and insert <relevant person>

**Daniel Johnson**

41 In section 11, page 6, line 8, leave out <offender> and insert <relevant person>

**Daniel Johnson**

42 In section 11, page 6, line 10, leave out <offender> and insert <relevant person>

**Daniel Johnson**

43 In section 11, page 6, line 13, leave out <offender> and insert <relevant person>

**Daniel Johnson**

44 In section 11, page 6, line 17, leave out <offender> and insert <relevant person>

**Daniel Johnson**

45 In section 11, page 6, line 26, leave out <offender> and insert <relevant person>

**Daniel Johnson**

46 In section 12, page 7, line 7, leave out <offender> and insert <relevant person>

**THIS IS NOT THE MARSHALLED LIST**

**Daniel Johnson**

47 In section 12, page 7, line 8, leave out <offender> and insert <relevant person>

**Daniel Johnson**

48 In section 12, page 7, line 9, leave out <offender> and insert <relevant person>

**Daniel Johnson**

49 In section 12, page 7, line 10, leave out <offender> and insert <relevant person>

**Daniel Johnson**

50 In section 12, page 7, line 11, leave out <offender> and insert <relevant person>

**Daniel Johnson**

51 In section 12, page 7, line 13, leave out <offender> and insert <relevant person>

**Daniel Johnson**

52 In section 13, page 7, line 25, leave out <offender> and insert <relevant person>

**Daniel Johnson**

53 In section 13, page 7, line 34, leave out <offender> and insert <relevant person>

**Daniel Johnson**

54 In section 13, page 8, line 4, leave out <offender> and insert <relevant person>

**Daniel Johnson**

55 In section 13, page 8, line 7, leave out <offender> and insert <relevant person>

**Daniel Johnson**

56 In section 14, page 8, line 13, leave out <offender> and insert <relevant person>

**Daniel Johnson**

57 In section 14, page 8, line 17, leave out <offender> and insert <relevant person>

**Daniel Johnson**

58 In section 14, page 8, line 28, leave out <offender's> and insert <relevant person's>

**Daniel Johnson**

59 In section 14, page 8, line 29, leave out <offender's> and insert <relevant person's>

**Daniel Johnson**

60 In section 14, page 8, line 33, leave out <offender> and insert <relevant person>

**Daniel Johnson**

61 In section 16, page 9, line 14, leave out <offenders> and insert <relevant persons>

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### **Daniel Johnson**

- 62 In section 16, page 9, line 16, leave out <offenders> and insert <relevant persons>

### **Daniel Johnson**

- 63 After section 16, insert—

*<Interpretation of Part 1*

#### **Interpretation of Part 1**

In this Part, “relevant person” means an individual who has been convicted of any offence.>

### **Daniel Johnson**

- 68 In the long title, page 1, line 1, leave out <offenders> and insert <persons who have been convicted of an offence>

### **Daniel Johnson**

- 69 In the long title, page 1, line 2, leave out <offenders> and insert <such persons>

### **Daniel Johnson**

- 70 In the long title, page 1, line 3, leave out <offenders> and insert <such persons>

## **Social work involvement**

### **Liam Kerr**

- 78 In section 1, page 1, line 24, at end insert <, and  
( ) make available to a relevant local authority (in the exercise of any of its social work services functions) a summary of evidence presented during the case.>

## **List of relevant disposals**

### **Humza Yousaf**

- 81 In section 3, page 2, line 16, at end insert—  
<( ) making an order under, or in any way altering an order made under, section 209(1) of the Criminal Procedure (Scotland) Act 1995 (relating to supervised release in certain cases under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993),>

### **Humza Yousaf**

- 82 In section 3, page 2, line 28, leave out from first <under> to <109> in line 29 and insert <by virtue of, or varying or renewing an order made by virtue of, section 104(1)(b) as read with section 104(2) and (3)>



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### **Humza Yousaf**

- 83 In section 3, page 2, line 31, leave out <11, 12 or 21> and insert <11>

### **Details in relation to monitoring**

### **Humza Yousaf**

- 84 In section 4, page 3, line 6, after <way> insert <(including being at, or not being at, a particular place)>

### **Humza Yousaf**

- 85 In section 7, page 4, line 22, after <way> insert <(including being at, or not being at, a particular place)>

### **Humza Yousaf**

- 86 In section 8, page 4, line 33, after <manner> insert <(including of being at, or not being at, a particular place)>

### **Humza Yousaf**

- 87 In section 8, page 4, line 35, at end insert <, or  
( ) measuring the level of alcohol, drugs or other substances consumed, taken or ingested by an offender.>

### **Humza Yousaf**

- 88 In section 8, page 4, line 35, at end insert—  
<( ) Regulations under subsection (1) may include provision as to any apparatus to be linked to a device as well as prescribing the device itself.>

### **Humza Yousaf**

- 89 In section 9, page 5, line 6, after <how> insert <or when>

### **Humza Yousaf**

- 91 In section 12, page 7, line 7, after <how> insert <or when>

### **Humza Yousaf**

- 92 In section 12, page 7, line 19, at end insert—  
<( ) In subsections (2) and (3), the references to an approved device include any apparatus linked to the device as well as meaning the device itself.>

### **Humza Yousaf**

- 94 In section 14, page 8, line 27, leave out <This includes> and insert <Examples are>

### **Humza Yousaf**

- 95 In section 14, page 8, line 28, leave out <offender's> and insert <device's>

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### Humza Yousaf

- 96 In section 14, page 8, line 28, after <time> insert <(including when being at, or not being at, a particular place)>

### Humza Yousaf

- 97 In section 14, page 8, line 28, leave out <or> and insert—  
<( ) the—  
(i) connectivity of the device or working of the device in some other way,  
(ii) wearing of the device or use of the device in some other manner,  
at a particular time,>

### Humza Yousaf

- 98 In section 14, page 8, line 29, after <presence> insert <or level>

### Humza Yousaf

- 99 In section 14, page 8, line 29, leave out <offender's> and insert <wearer's or user's>

### Humza Yousaf

- 100 In section 14, page 9, line 1, leave out <a> and insert <the>

## **Duties before releasing a prisoner on licence**

### Daniel Johnson

- 31 After section 7, insert—  
**<Duty to share information before releasing a prisoner on licence**  
(1) Before exercising their powers to release a prisoner on licence under section 3AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (further powers to release prisoners), the Scottish Ministers must where reasonably practicable request information relevant to the monitoring of that prisoner from the persons mentioned in subsection (2).  
(2) The persons are—  
(a) the Scottish Courts and Tribunals Service,  
(b) the Police Service of Scotland,  
(c) a relevant local authority (in the exercise of any of its social work services functions).  
(3) Following receipt of a request under subsection (1), the persons mentioned in subsection (2) must provide the information requested to the Scottish Ministers not later than 28 days after the day on which the request is received.  
(4) The Scottish Ministers may by regulations make further provision for the purposes of and in connection with this section.>

## THIS IS NOT THE MARSHALLED LIST

### Daniel Johnson

131 After section 7, insert—

#### <Duty to have regard to bail decision before releasing a prisoner on licence

Before exercising their powers to release a prisoner on licence under section 3AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (further powers to release prisoners), the Scottish Ministers must have regard to any decision made prior to the prisoner's conviction by the sheriff or (as the case may be) judge under Part III of the Criminal Procedure (Scotland) Act 1995 to admit or refuse to admit the prisoner to bail.>

### Contractual arrangements for the system

#### John Finnie

90 In section 10, page 5, line 31, at end insert—

- <(4) However, contractual or other arrangements must not be made under subsection (1) with an individual who is not acting in the course of employment by a public body or registered charity.
- (5) In subsection (4), “public body or registered charity” means any of the following—
  - (a) a Minister of the Crown,
  - (b) a person established by an enactment,
  - (c) a body comprised solely of persons described by this subsection,
  - (d) a body corporate that has no members other than (either or both)—
    - (i) persons described by this subsection,
    - (ii) persons acting on behalf of persons described by this subsection,
  - (e) a charity registered under Part 1 of the Charities and Trustee Investment (Scotland) Act 2005,
  - (f) a social enterprise (construed in accordance with section 257J of the Income Tax Act 2007).
- (6) The Scottish Ministers may by regulations make such modifications to subsection (5) as they consider appropriate.
- (7) Regulations under this section are subject to the negative procedure.>

### Deemed breach of disposal or conditions

#### Liam Kerr

73 In section 12, page 7, line 17, at end insert—

- <(3A) An offender who contravenes subsection (2) or (3) commits an offence.
- (3B) An offender who commits an offence under subsection (3A) is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale (or both).>

## THIS IS NOT THE MARSHALLED LIST

### **Liam Kerr**

74 In section 12, page 7, line 17, at end insert—

<( ) For the avoidance of doubt, where a constable has reasonable grounds to suspect that an offender has contravened subsection (2) or (3), that constable may arrest the offender.>

### **Margaret Mitchell**

132 After section 13, insert—

#### **<Notification procedures following suspected breach of disposal or conditions**

- (1) This section applies where an offender is suspected of having breached—
  - (a) the terms of a disposal mentioned in section 3(2), or
  - (b) any of the conditions mentioned in section 7(1).
- (2) A person designated under section 11(1) must notify the bodies mentioned in subsection (3) immediately or as soon as is reasonably practicable.
- (3) The bodies are—
  - (a) the Police Service of Scotland,
  - (b) such other body as the Scottish Ministers may by regulations specify.
- (4) Regulations under this section are subject to the negative procedure.>

### **Minor and technical**

#### **Humza Yousaf**

93 In section 13, page 8, line 1, leave out subsection (6)

#### **Humza Yousaf**

104 In schedule 1, page 33, leave out lines 30 and 31

### **SSI procedure**

#### **Humza Yousaf**

101 In section 15, page 9, line 11, after <Part> insert—

<( ) if enabled by section 9(1), are subject to the affirmative procedure,  
( ) otherwise,>

### **Supervised release orders**

#### **Humza Yousaf**

103 In schedule 1, page 31, line 6, at end insert—

<(1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

## THIS IS NOT THE MARSHALLED LIST

- (2) In section 209, after subsection (7A) there is inserted—
- “(7B) A supervised release order made in relation to a person is to be taken to be of no effect if the person becomes a long-term prisoner, as defined in section 27(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 Act, because of the treating of—
- (a) a sentence in association with which the order is made, and
  - (b) any other sentence (whenever imposed on the person),
- together as a single term by virtue of section 27(5) of that Act.”>

### **Enforcement of fines etc.**

#### **Lewis Macdonald**

- 1 After section 16, insert—

#### **<PART**

#### ENFORCEMENT OF FINES ETC.: DECLARATION OF INCOME FORM

#### *Declaration of income form*

#### **Declaration of income form**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) After section 226A, there is inserted—
- “226AA Declaration of income form**
- (1) The court may, for the purpose mentioned in subsection (2), make an order requiring a person who has received a relevant penalty to complete a declaration of income form.
  - (2) The purpose of a declaration of income form is to obtain information on the financial means of a person who has received but not paid a relevant penalty.
  - (3) For the purposes of this section, a declaration of income form is a form issued by or on behalf of the court to a person who has received a relevant penalty which requires that person to provide in writing—
    - (a) the person’s name,
    - (b) the person’s date of birth,
    - (c) the person’s home address and telephone number,
    - (d) information about the person’s income,
    - (e) information about the person’s expenditure,
    - (f) information about the person’s accommodation and living circumstances,
    - (g) information about any vehicles owned by the person,
    - (h) the person’s bank details,
    - (i) any other information as the court may specify on the form.
  - (4) It is an offence—
    - (a) knowingly to provide false information on a declaration of income form,

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- (b) not to comply with an order made under subsection (1).
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) For the avoidance of doubt, reference in subsection (3) to “a form issued by or on behalf of the court” includes a declaration of income form issued by—
  - (a) a FEO,
  - (b) the clerk of court,
  - (c) the Crown Office and Procurator Fiscal Service.
- (7) The Scottish Ministers may by regulations make further provision for the purposes of and in connection with this section.
- (8) Regulations under subsection (7) above are to be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.”.>

### Lewis Macdonald

102 After section 16, insert—

#### <PART

#### DEDUCTION FROM BENEFITS

#### *Deduction from benefits*

#### **Deduction from benefits**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) For section 226E, there is substituted—

#### **“226E Deduction from benefits**

- (1) Without prejudice to the generality of section 226B, when making an enforcement order under that section, the court may make an application under regulations made under section 24(1)(a) of the Criminal Justice Act 1991 (c.53) for deductions as described in that section.
- (2) Where a relevant penalty has not been paid in accordance with an enforcement order, a FEO may request the relevant court to make an application under regulations made under section 24(1)(a) of the Criminal Justice Act 1991 (c.53) for deductions as described in that section.”.>

### **Part 2: regulations for treating certain convictions as spent etc.**

#### Humza Yousaf

105 After section 32, insert—

#### *<Applications for certain convictions to be treated as spent*

#### **Excluded sentences: applications for convictions to be treated as spent**

- (1) The Scottish Ministers may make regulations for or in connection with the purpose mentioned in subsection (2).

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- (2) The purpose is allowing a person on whom a relevant sentence was imposed in respect of a conviction to apply (both)—
  - (a) to be treated as a protected person in respect of the conviction for the purposes of the 1974 Act, and
  - (b) for the conviction to be treated as spent for the purposes of the 1974 Act.
- (3) A relevant sentence is—
  - (a) a sentence mentioned in section 5(1)(b) or (da) of the 1974 Act, or
  - (b) a sentence imposed by a court outwith Scotland which, by virtue of section 5(2F)(d) of the 1974 Act, falls to be treated as such a sentence.
- (4) The regulations must contain provision—
  - (a) for—
    - (i) an application to be made to a specified reviewer, and
    - (ii) the application to be determined by the specified reviewer,
  - (b) excluding someone who is, for whatever reason, subject to notification requirements under Part 2 of the Sexual Offences Act 2003 from making an application,
  - (c) preventing an application from being made until the expiry of the appropriate period, and
  - (d) setting, or for ascertaining, the relevant date.
- (5) In subsection (4)—
  - (a) in paragraph (c), “the appropriate period” is—
    - (i) in the case of an applicant who was 18 years of age or older on the date of the conviction to which the application relates, the term of the sentence imposed in respect of the conviction plus 6 years,
    - (ii) in the case of an applicant who was under 18 years of age on the date of the conviction to which the application relates, the term of the sentence imposed in respect of the conviction plus 3 years,
  - (b) in paragraph (d), “the relevant date” is the date from which (both)—
    - (i) an applicant’s conviction is to be treated as spent, and
    - (ii) the applicant is to be treated as a protected person.
- (6) In this section and section (*Regulations under section (Excluded sentences: applications for convictions to be treated as spent): general details*), the references to—
  - (a) a protected person, or
  - (b) a conviction being treated as spent,are to be construed in accordance with the 1974 Act.>

**Humza Yousaf**

**106** After section 32, insert—

**<Regulations under section (*Excluded sentences: applications for convictions to be treated as spent*): general details**

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- (1) Regulations under section (*Excluded sentences: applications for convictions to be treated as spent*) may contain provision about (in particular)—
  - (a) the process for applications, including as to—
    - (i) the way of applying,
    - (ii) information to be supplied by applicants,
  - (b) eligibility to make applications, including exceptions and exclusions,
  - (c) fees payable in connection with applications,
  - (d) the functions of the specified reviewer concerning applications, including as to—
    - (i) giving notifications,
    - (ii) obtaining information,
  - (e) the procedure for determining applications, including matters—
    - (i) to which the specified reviewer is to have regard,
    - (ii) which the specified reviewer is to take particularly into account,
  - (f) the types of determinations to be available in respect of applications, and the functions of the specified reviewer concerning determinations,
  - (g) the issuing of, and making of requests for, reasons for determinations,
  - (h) notifications of determinations,
  - (i) time limits in relation to—
    - (i) notifications of applications and determinations,
    - (ii) supplying information in connection with applications,
  - (j) second or subsequent applications relating to the same conviction, including setting a period that must expire before such applications may be made,
  - (k) reconsideration, or consideration afresh, of determinations,
  - (l) reports to be produced by the specified reviewer, or guidance to be given to the reviewer by the Scottish Ministers, on the exercise of the reviewer's functions concerning applications and determinations,
  - (m) appeals against determinations, including—
    - (i) entitlement to appeal,
    - (ii) grounds, time limits and procedure for appeal,
  - (n) the legal effect of determinations, arrived at initially or on appeal, including the result that (both)—
    - (i) a person is to be treated as a protected person, and
    - (ii) a conviction is to be treated as spent.
- (2) In relation to a conviction that is, by virtue of the operation of regulations made under section (*Excluded sentences: applications for convictions to be treated as spent*), to be treated as a spent conviction, provision which may be made about the legal effect of determinations extends to (any of)—
  - (a) provision that the conviction is to be, or is not to be, treated as a protected conviction within the meaning of—



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- (i) section 126ZA of the Police Act 1997,
  - (ii) section 57A of the Protection of Vulnerable Groups (Scotland) Act 2007, or
  - (iii) article 2A of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (S.S.I. 2013/50),
- (b) provision as to the time from which the conviction is to be, or before which the conviction is not to be, treated as a protected conviction, and
- (c) provision that the conviction is to be treated as if it were a conviction for an offence of a particular kind prescribed in the provision.
- (3) In this section and section (*Excluded sentences: applications for convictions to be treated as spent*), “the specified reviewer” means whoever is specified as such in regulations made under section (*Excluded sentences: applications for convictions to be treated as spent*).>

### Humza Yousaf

107 After section 32, insert—

**<Regulations under section (*Excluded sentences: applications for convictions to be treated as spent*): appropriate period**

The Scottish Ministers may by regulations modify section (*Excluded sentences: applications for convictions to be treated as spent*)(5)(a) by amending—

- (a) an age stated in sub-paragraph (i) or (ii),
- (b) a number of years stated in sub-paragraph (i) or (ii).>

### Humza Yousaf

108 After section 32, insert—

**<Regulations under sections (*Excluded sentences: applications for convictions to be treated as spent*) and (*Regulations under section (Excluded sentences: applications for convictions to be treated as spent): appropriate period*): procedure etc.**

- (1) Regulations under section (*Excluded sentences: applications for convictions to be treated as spent*) may—
  - (a) modify any enactment (including the 1974 Act),
  - (b) make different provision for different purposes.
- (2) Regulations under sections (*Excluded sentences: applications for convictions to be treated as spent*) and (*Regulations under section (Excluded sentences: applications for convictions to be treated as spent): appropriate period*) are subject to the affirmative procedure.>

### Humza Yousaf

109 In schedule 2, page 34, line 29, leave out from <which> to end of line 31 and insert <listed in section 5(1).>.”>

### Humza Yousaf

110 In schedule 2, page 35, line 31, after <subsection (1)(d)> insert <—

- ( ) for the words “or other penalty” there is substituted “requirement, restriction or other way of regulating the person’s behaviour”,

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( )>

**Part 3: miscellaneous as to Parole Board**

**Humza Yousaf**

- 111 In section 37, page 25, line 19, leave out <the end> and insert <“is”>

**Humza Yousaf**

- 112 In section 38, page 26, line 12, at end insert—

<( ) The instrument of appointment of the member may be annotated or reissued so as to show that the member is reappointed under sub-paragraph (1).>

**Humza Yousaf**

- 113 In section 38, page 26, line 20, leave out <meaning> and insert <including>

**Humza Yousaf**

- 124 Move section 44 to before section 36

**Humza Yousaf**

- 125 Move section 45 to before section 36

**Humza Yousaf**

- 126 Before section 46, insert—

**<CHAPTER**

**MISCELLANEOUS**

**Amendment of oversight provisions**

- (1) The Public Appointments and Public Bodies etc. (Scotland) Act 2003 is amended as follows.
- (2) In schedule 2, the entry relating to the Parole Board for Scotland is repealed.
- (3) The Judiciary and Courts (Scotland) Act 2008 is amended as follows.
- (4) In section 10, after paragraph (fzb) of subsection (1) there is inserted—

“(fzc)the office of member of the Parole Board for Scotland (including the chairperson of the Parole Board),”.>

**Humza Yousaf**

- 127 In the long title, page 1, line 3, leave out from <relating> to end of line 4 and insert <concerning particular aspects of the system governing parole of offenders.>

**Timing of release of prisoners**

## THIS IS NOT THE MARSHALLED LIST

### Humza Yousaf

114 Before section 40, insert—

#### <CHAPTER

#### RULES AS TO PRISONERS

#### *Provisions regarding parole*

#### **Release timed to benefit re-integration**

- (1) The 1993 Act is amended as follows.
- (2) In section 26C, in subsection (3), for the word “days” there is substituted “working days (that is, days other than a Saturday or Sunday or a public holiday as described in section 27(8))”.>

### **Home detention curfew: eligibility and operation**

### Humza Yousaf

115 Before section 40, insert—

#### <Restriction on use of curfew condition

- (1) The 1993 Act is amended as follows.
- (2) In section 3AA, paragraph (b) of subsection (1) is repealed (as is the word “or” immediately preceding that paragraph).>

### Humza Yousaf

118 In section 42, page 28, line 4, at end insert—

<( ) In section 17A, for subsection (1) there is substituted—

- “(1) Where a prisoner has been released on licence under section 3AA, the Scottish Ministers may revoke the licence and recall the person to prison if in their opinion the revocation and recall are expedient in the public interest.”.>

### Humza Yousaf

119 In section 42, page 28, line 9, at end insert—

<( ) In section 17A—

- (a) subsection (5) is repealed,
- (b) after subsection (5) there is inserted—
  - “(5A) Despite the cancellation of the revocation of a person’s licence by virtue of subsection (4), the person’s recall to prison remains effective.
  - (5B) Where a person’s recall to prison remains effective under subsection (5A), the Scottish Ministers must consider whether the person should again be released under section 3AA.”.>

### Humza Yousaf

120 Move section 42 to before section 40

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**Return to prison of person whose licence is revoked**

**Humza Yousaf**

**116** In section 41, page 27, line 38, at end insert—

<( ) In subsection (3)(b) of section 10A, the word “immediately” is repealed.>

**Humza Yousaf**

**117** In section 41, page 27, line 39, after <17> insert—

<( ) in subsection (2), for the words “revocation of a person’s licence” there is substituted “return to prison of a person whose licence is revoked”,

( )>

**Parole Board: test for release and summary of recommendations**

**Daniel Johnson**

**128** After section 41, insert—

**<Publication by Parole Board of test for release and summary of recommendations**

(1) The 1993 Act is amended as follows.

(2) In section 1, after subsection (3A) there is inserted—

“(3B) The Parole Board is to publish, in such form and manner as it considers appropriate—

(a) the tests or factors that it will take into account before making a recommendation under subsection (3),

(b) a summary, with such modifications and redactions as it considers appropriate, of its recommendations under subsection (3).”>

**Parole Board: provision of assistance at a hearing**

**Gordon Lindhurst**

**79** After section 42, insert—

**<Provision of assistance to a prisoner whose case the Board is considering**

(1) The 1993 Act is amended as follows.

(2) In section 20, after subsection (4A), there is inserted—

“(4B) The Board must make provision with respect to its proceedings—

(a) to ensure that a prisoner whose case the Board is considering understands the relevant matters being discussed at a hearing,

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- (b) to ensure that a prisoner whose case the Board is considering is supplied with material appropriate to the prisoner's needs (and in a form that is appropriate to those needs and permanent) from which the prisoner may refresh the prisoner's understanding of those matters,
- (c) to ensure that a prisoner whose case the Board is considering has the opportunity of making use of any independent advocacy services to which the prisoner may be entitled, and
- (d) for or in connection with the circumstances in which a curator *ad litem* may be appointed.”.>

### **Persons unlawfully at large**

#### **Humza Yousaf**

**121** After section 43, insert—

#### **<Temporary release on licence under prison rules**

- (1) The Prisons (Scotland) Act 1989 is amended as follows.
- (2) In subsection (6) of section 39, after the word “release” there is inserted “on licence”.>

#### **Humza Yousaf**

**122** After section 43, insert—

#### *<Persons unlawfully at large*

#### **Offence of remaining unlawfully at large**

- (1) The Prisons (Scotland) Act 1989 is amended as follows.
- (2) After section 32 there is inserted—

#### *“Remaining unlawfully at large*

#### **32A Offence where unlawfully at large**

- (1) A person commits an offence if, having been deemed to be unlawfully at large by virtue of—
  - (a) section 17(5) or 17A(6) of the Prisoners and Criminal Proceedings (Scotland) Act 1993,
  - (b) section 28(7) of this Act, or
  - (c) section 40(4) of this Act,the person remains unlawfully at large.
- (2) A person who commits an offence under subsection (1) is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

#### **32B Certification of being unlawfully at large**

## **THIS IS NOT THE MARSHALLED LIST**

- (1) Subsections (2) and (3) relate to proceedings for an offence under section 32A(1).
- (2) A qualifying document is sufficient evidence of the fact that a person has been deemed to be unlawfully at large by virtue of a particular section mentioned in section 32A(1).
- (3) A document is a qualifying document if it—
  - (a) certifies with respect to the person, by reference to the particular section mentioned in section 32A(1)—
    - (i) the matter of being deemed to be unlawfully at large, and
    - (ii) the date from which the deeming took effect, and
  - (b) bears to be signed and dated by or on behalf of the Scottish Ministers.

### **32C Meaning of remaining unlawfully at large**

- (1) Section 32A(1) is to be construed as provided for in (as applicable)—
  - (a) subsection (2), or
  - (b) subsection (3) (as read with subsections (4) to (7)).
- (2) In a case of a person to whom section 32A(1)(c) relates, the person remains unlawfully at large if the person—
  - (a) has been, orally or in writing—
    - (i) informed of the period of temporary release that is the subject of the person's licence, and
    - (ii) warned of the requirement to return to prison after the expiry of the period and of the offence and punishment available for failing to do so, and
  - (b) without reasonable excuse, fails to take all necessary steps in order to return to prison as soon as possible after the period of temporary release expires.
- (3) In a case of a person to whom section 32A(1)(a), (b) or (c) relates, the person remains unlawfully at large if the person—
  - (a) is given notification of the matter of being deemed to be unlawfully at large, and
  - (b) without reasonable excuse, fails to take all necessary steps in order to return to prison as soon as possible after notification of the matter is given to the person.
- (4) Notification of the matter to a person is to, as far as practicable—
  - (a) state the date from which the matter has arisen,
  - (b) state that the person has been recalled to prison (and record the reason for recall), and
  - (c) state—

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- (i) that the person must take all necessary steps in order to return to prison at the relevant time (as described in accompanying words), and
  - (ii) that prosecution for an offence punishable by imprisonment or a fine (or both) could result if the person fails to do so.
- (5) Notification of the matter is given to a person where the person—
- (a) is actually notified of the matter orally or in writing, or
  - (b) is to be regarded as notified of the matter.
- (6) A person is to be regarded as notified of the matter if—
- (a) written notice of the matter—
    - (i) is sent or delivered to an appropriate address,
    - (ii) prescribes a specific period for the purposes of this subsection, and
    - (iii) bears to be signed and dated by or on behalf of the Scottish Ministers, and
  - (b) the specific period so prescribed in the notice expires.
- (7) An appropriate address is—
- (a) an address at which the person is, in accordance with the person’s licence, permitted to reside or stay, or
  - (b) an address nominated, in accordance with the person's licence, for the purposes of this section.

### **32D Definition of associated expressions**

- (1) This section defines certain expressions used in section 32C.
- (2) A reference to a licence is to a licence under which a person is released from prison under the licence provisions.
- (3) A reference to prison is to such prison or other institution from which a person can be released on licence under the licence provisions.
- (4) Here, the licence provisions are—
  - (a) section 22 of this Act,
  - (b) rules for temporary release made under section 39 of this Act, or
  - (c) Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993.”.>

### **Humza Yousaf**

**123** After section 43, insert—

#### **<Arrest where unlawfully at large**

- (1) The Prisons (Scotland) Act 1989 is amended as follows.
- (2) In section 40—
  - (a) in subsection (1), after the word “required” there is inserted “or liable”,
  - (b) in subsection (4), for the words “For the purposes of this section, a” there is substituted “A”,

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and the title of section 40 becomes “Arrest of and rules for absent prisoners”.

- (3) In section 40A—
  - (a) in subsection (1), after the word “application” there is inserted “by a constable”,
  - (b) after subsection (1) there is inserted—

“(1A) A warrant for a person’s arrest under this section confers power on a constable, using such force as the constable considers necessary, to enter and search any premises or other places specified in the warrant.”.
- (4) The Custodial Sentences and Weapons (Scotland) Act 2007 is amended as follows.
- (5) In paragraph 4 of schedule 6, in the provision numbered as if inserted as section 9C(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, the words “for the purposes of section 40 of the Prisons (Scotland) Act 1989 (c.45) (persons unlawfully at large)” are repealed.>

### **Preparing prisoner for release**

#### **Daniel Johnson**

64 After section 43, insert—

#### **<Provision for prisoners upon release**

- (1) The 1993 Act is amended as follows.
- (2) After section 26C, there is inserted—

#### **“26CA Duty to prepare prisoners for release**

- (1) Where a prisoner is to be released by the Scottish Ministers, they must ensure that, prior to the day on which the prisoner would fall to be released, they have complied with the duties mentioned in subsection (2).
- (2) The duties are—
  - (a) to ensure that the prisoner is registered with a general medical practitioner,
  - (b) to provide the prisoner with a correspondence address,
  - (c) to ensure that the prisoner possesses a type of identification mentioned in subsection (3).
- (3) For the purposes of this section, “a type of identification” means a full or provisional driving licence (to be understood in accordance with Part III of the Road Traffic Act 1988).
- (4) The Scottish Ministers may by regulations make such modification to provisions of this section as they consider appropriate.”.>

#### **Daniel Johnson**

65 After section 43, insert—

#### **<Provision of general medical practitioner for prisoners upon release**

- (1) The 1993 Act is amended as follows.
- (2) After section 26C, there is inserted—



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### **“26CB Duty to provide general medical practitioner upon release**

- (1) Where a prisoner is to be released by the Scottish Ministers, they must ensure that, prior to the day on which the prisoner would fall to be released, they have complied with the duty mentioned in subsection (2).
- (2) The duty is to ensure that the prisoner is registered with a general medical practitioner.
- (3) The Scottish Ministers may by regulations make such modification to provisions of this section as they consider appropriate.”>

**Daniel Johnson**

**66** After section 43, insert—

#### **<Provision of correspondence address for prisoners upon release**

- (1) The 1993 Act is amended as follows.
- (2) After section 26C, there is inserted—

#### **“26CC Duty to provide correspondence address for prisoners upon release**

- (1) Where a prisoner is to be released by the Scottish Ministers, they must ensure that, prior to the day on which the prisoner would fall to be released, they have complied with the duty mentioned in subsection (2).
- (2) The duty is to provide the prisoner with a correspondence address.
- (3) The Scottish Ministers may by regulations make such modification to provisions of this section as they consider appropriate.”>

**Daniel Johnson**

**67** After section 43, insert—

#### **<Provision of identification for prisoners upon release**

- (1) The 1993 Act is amended as follows.
- (2) After section 26C, there is inserted—

#### **“26CD Duty to provide identification for prisoners for release**

- (1) Where a prisoner is to be released by the Scottish Ministers, they must ensure that, prior to the day on which the prisoner would fall to be released, they have complied with the duty mentioned in subsection (2).
- (2) The duty is to ensure that the prisoner possesses a type of identification mentioned in subsection (3).
- (3) For the purposes of this section, “a type of identification” means a full or provisional driving licence (to be understood in accordance with Part III of the Road Traffic Act 1988).
- (4) The Scottish Ministers may by regulations make such modification to provisions of this section as they consider appropriate.”>

**Daniel Johnson**

**129** After section 43, insert—

#### **<Duty to take steps to ensure released prisoner has suitable means of financial support**

## THIS IS NOT THE MARSHALLED LIST

- (1) The 1993 Act is amended as follows.
- (2) After section 26C, there is inserted—

“**26CE Duty to take steps to ensure released prisoner has suitable means of financial support**

  - (1) Where a prisoner is to be released by the Scottish Ministers, they must ensure that, prior to the day on which the prisoner would fall to be released, they have provided support to the prisoner to find and secure suitable employment on release.
  - (2) Where, despite subsection (1)—
    - (a) a prisoner has not secured suitable employment on release, or
    - (b) the expected earnings from the prisoner’s employment are not sufficient to provide a suitable means of financial support,the Scottish Ministers must take other appropriate steps to ensure that the prisoner has a suitable means of financial support on release.
  - (3) Examples of other appropriate steps for the purposes of complying with the duty in subsection (2) include but are not limited to assisting the prisoner to—
    - (a) make a claim for universal credit under Part 1 of the Welfare Reform Act 2012,
    - (b) make a claim, or to make arrangements to re-establish receipt of, any other social security benefit or tax credit to which the prisoner may be entitled under—
      - (i) the Social Security Contributions and Benefits Act 1992,
      - (ii) the Jobseekers Act 1995,
      - (iii) the Tax Credits Act 2002,
      - (iv) the Welfare Reform Act 2012.
  - (4) In this section, “suitable means of financial support” means a source of funds sufficient to ensure an adequate standard of maintenance and accommodation for the prisoner and any dependants of the prisoner.
  - (5) The Scottish Ministers may by regulations make such modifications to provisions of this section as they consider appropriate.”>

### **FAI where death caused by person subject to a curfew condition**

**Neil Bibby**

**Supported by: Liam Kerr**

**71** After section 47, insert—

<PART

DEATH CAUSED BY PERSON SUBJECT TO A CURFEW CONDITION

*Death caused by person subject to a curfew condition*

**Death caused by person subject to a curfew condition**

## THIS IS NOT THE MARSHALLED LIST

- (1) This section applies where a person is subject to a curfew condition as provided for in section 12AA(1)(b) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (which relates to release on licence under section 3AA of that Act).
- (2) Where a person mentioned in subsection (1) is found to have caused the death of an individual whilst the person is subject to such a curfew condition, an inquiry must be held under section 2 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 into the events that led to the death.
- (3) This section applies where the death occurs on or after 15 January 2016.>

**Liam Kerr**

- 71A** As an amendment to amendment 71, line 6, leave out from <subject> to end of line 8 and insert <released on licence under section 3AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993.>

**Neil Bibby**

**Supported by: Liam Kerr**

- 72** In section 49, page 29, line 26, at end insert—  
<(za) section (*Death caused by person subject to a curfew condition*),>

### **Assessment of risk posed by offenders**

**Liam Kerr**

- 75** After section 47, insert—

#### **<PART**

#### **RISK ASSESSMENT OF OFFENDERS**

#### *Risk assessment tool*

#### **Risk assessment tool**

- (1) Not later than 6 months after the date on which this section comes into force, the Scottish Ministers must develop a tool to assess the risk posed by offenders after release from prison (the “risk assessment tool”).
- (2) The purpose of the risk assessment tool is to assess the risk of an offender being at liberty to the safety of the public at large.
- (3) The risk assessment tool must include guidance on how to assess—
  - (a) risk posed by the offender to individuals or the public at large,
  - (b) the likelihood of the offender reoffending when at liberty,
  - (c) the capacity of bodies responsible for monitoring the offender whilst at liberty to carry out that monitoring effectively.
- (4) In developing the risk assessment tool, the Scottish Ministers must consult—
  - (a) the Scottish Courts and Tribunals Service,
  - (b) the Parole Board,
  - (c) the Police Service of Scotland,

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- (d) a relevant local authority (in the exercise of any of its social work services functions),
  - (e) the Risk Management Authority.
- (5) When disposing of a case in respect of an offender wholly or partly as mentioned in the list in section 3(2), a court must have regard to the risk assessment tool.
- (6) Not later than 2 years after the date on which this section comes into force, the Scottish Ministers must publish and lay before the Parliament a report on the operation of the risk assessment tool.>

### Daniel Johnson

134 After section 47, insert—

#### <PART

#### RISK ASSESSMENT OF PRISONERS

##### *Risk assessment of prisoners*

##### **Risk assessment of prisoners**

- (1) Not later than 6 months after the date on which this section comes into force, the Scottish Ministers must make an assessment of the risk posed by a prisoner after release from prison.
- (2) In carrying out an assessment under subsection (1), the Scottish Ministers must assess the risk to the safety of the public at large of a prisoner being released on licence under section 3AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (further powers to release prisoners).
- (3) The Scottish Ministers must by regulations make further provision about how they will make an assessment under subsection (1).
- (4) A risk assessment carried out subsection (1) must have regard to information provided under section (*Duty to share information before releasing a prisoner on licence*).
- (5) Not later than 5 years after the date on which this section comes into force, the Scottish Ministers must review how it carries out assessments under subsection (1).
- (6) The Scottish Ministers must publish and lay before the Parliament a report on a review under subsection (5).>

### **Home detention curfew: evaluation etc.**

### Margaret Mitchell

130 After section 47, insert—

#### <PART

#### MONITORING AND EVALUATION OF HOME DETENTION CURFEW CONDITIONS

##### **Monitoring and evaluation of home detention curfew conditions**

- (1) This section applies where a person is subject to a curfew condition as provided for in section 12AA(1)(b) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (which relates to release on licence under section 3AA of that Act).

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- (2) The Scottish Ministers must monitor compliance with—
  - (a) the curfew condition, and
  - (b) any additional condition imposed by the Scottish Ministers as part of the licence on the person mentioned in subsection (1).
- (3) Where a condition mentioned in subsection (2) has not been complied with, the Scottish Ministers may revoke the licence and return the person to prison.
- (4) Not later than 6 months after the date on which this section comes into force, the Scottish Ministers must publish and lay before the Parliament guidance on monitoring compliance with the conditions mentioned in subsection (2).
- (5) Guidance published under subsection (4) must be kept under review by the Scottish Ministers.
- (6) In preparing and reviewing guidance under subsections (4) and (5), the Scottish Ministers must consult—
  - (a) the Scottish Courts and Tribunals Service,
  - (b) the Parole Board,
  - (c) the Police Service of Scotland,
  - (d) relevant local authorities (in the exercise of any of their social work services functions),
  - (e) the Risk Management Authority.>

### **Restriction of liberty orders**

#### **Margaret Mitchell**

133 After section 47, insert—

#### <PART

#### RESTRICTION OF LIBERTY ORDERS

#### *Restriction of liberty orders*

#### **Restriction of liberty orders**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) After subsection (8)(c) of section 245A, there is inserted—
  - “(d) specific places (for example, the offender’s former home, the offender’s child’s school or the offender’s partner’s or ex-partner’s workplace) and named locations or areas which may be specified under subsection (2)(b).”>

### **Commencement provisions**

#### **Liam Kerr**

76 In section 49, page 29, line 30, at end insert—

<(2A) Regulations under subsection (2) are subject to the affirmative procedure.

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- (2B) The Scottish Ministers may not lay before the Parliament regulations under subsection (2) until the end of the period of one month beginning with the day on which they comply with subsection (2C).
- (2C) The Scottish Ministers must lay before the Parliament a report setting out why they consider that there are sufficient resources in place for the other provisions of this Act to come into force.>

### Daniel Johnson

**76A** As an amendment to amendment 76, line 8, at end insert—

- <( ) In preparing a report under subsection (2C), the Scottish Ministers must make an assessment of the impact of the other provisions of this Act on—
  - (a) the Scottish Courts and Tribunals Service,
  - (b) the Police Service of Scotland,
  - (c) relevant local authorities (in the exercise of any of their social work services functions),
  - (d) the Scottish Ministers (in respect of their powers with regard to the provision of prisons).>

### Liam Kerr

**80** In section 49, page 29, line 30, at end insert—

- <(2A) The Scottish Ministers may not lay before the Parliament regulations under subsection (2) until the end of the period of one month beginning with the day on which the condition in subsection (2B) is met.
- (2B) The condition is that the Statistics Board must have produced and published Scottish devolved statistics under Part 1 of the Statistics and Registration Service Act 2007 showing that the proportion of completions for community payback orders (imposed by virtue of section 227A of the Criminal Procedure (Scotland) Act 1995) for the most recent one-year period is at least 80%.>

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